TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 54

GEORGE EVERETT LEGG, PETITIONER,

vs.

E. ST. JOHN, TRUSTEE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 13, 1935.

CERTIORARI GRANTED MAY 27, 1935.

SUPREME COURT OF THE UNITED STATES

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vs.

E. ST. JOHN, TRUSTEE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

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[fols. 1 & 2]

IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF TENNESSEE

PETITION FOR ADJUDICATION—Filed March 8, 1934

To the Honorable George C. Taylor, Judge of the District Court of the United States for the Eastern District of Tennessee, Northeastern Division:

The petition of George Everett Legg, of Bristol, in the County of Sullivan, 17th District, State of Tennessee, (state occupation) none, (employer) none, respectfully represents that he has had his principal place of business, residence, for the greater portion of six months next immediately preceding the filing of this petition, at Bristol, Tennessee, within said judicial district; that he owes debts which he is unable to pay in full; that he is *un*willing to surrender all of his property for the benefit of his creditors except such as is exempt by law, and desires to obtain the benefit of the Acts of Congress relating to Bankruptcy.

That the schedules hereto annexed A (1, 2, 3, 4, 5), and verified by your petitioner's oath, contains a full and true statement of all his debts, and (so far as it is possible to ascertain) the names and places of residence of his creditors and such further statements concerning said debts as are required by the provisions of said acts.

That the schedule hereto annexed, marked B (1, 2, 3, 4, 5, 6), and verified by your petitioner's oath, contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said acts.

That petitioner has not been granted a discharge in bankruptcy within six years.

Wherefore your petitioner prays that he may be adjudged by the Court to be a bankrupt within the purview of said acts.

[fol. 3] George Everett Legg, Petitioner.

Attorney for Petitioner: None.

Duly sworn to by George Everett Legg. Jurat omitted in printing.

[fol. 4] IN UNITED STATES DISTRICT COURT FOR THE NORTHEASTERN DIVISION, EASTERN DISTRICT OF TENNESSEE

In Bankruptcy

No. 2415

In the Matter of GEORGE EVERETT LEGG, Bankrupt

ADJUDICATION OF BANKRUPTCY AND ORDER OF REFERENCE—Filed and Entered March 8, 1934

At Greenville, in said District, on the 8th day of March, A. D. 1934, before the Honorable George C. Taylor, Judge of said Court in Bankruptcy, the petition of George Everett Legg, of Bristol, Tenn., Sullivan County, that he be adjudged a bankrupt, within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said George Everett Legg is hereby declared and adjudged a bankrupt accordingly.

It is therefore ordered, that said matter be referred to H. C. Haynes, Esq., one of the Referees in Bankruptcy of this Court, to take such further proceedings therein as are required by said Acts; and that the said George Everett Legg shall attend before said Referee on the 8th day of March, at Greenville, and thenceforth shall submit to such orders as may be made by said Referee or by this Court relating to said voluntary bankruptcy.

Witness the Honorable George C. Taylor, Judge of the said Court, and the seal thereof, at Greenville, in said District, on the 8th day of March, A. D. 1934.

Lee A. Beeler, Clerk, by (Signed) Eva Lee, Deputy Clerk. (Seal of the Court.)

Approved for entry. Geo. C. Taylor, Judge.

[fol. 5] IN UNITED STATES DISTRICT COURT

TRUSTEE'S REPORT—Filed April 10, 1934

Edmund St. John, Trustee in this cause, after careful investigation of the assets of the bankrupt, reports as follows:

3. Exempt Property.

The bankrupt asks to have exempted a life insurance policy and the benefit of a disability contract attached to a

life insurance policy in the Metropolitan Life Insurance Company, No. 5081405-A, dated Sept. 28, 1927. Beginning June 18, 1930, the bankrupt has been receiving $174.52 on the 18th of each month under this disability contract. The last payment received by him was Feb. 18, 1934, between which time and the date of this petition, Mar. 8, 1934, one of the creditor's enjoined the Company from paying any further money on attachment proceedings. Payments made by the Company are made in advance, from the 18th of one month to the 18th of the next month so that nothing was due at the date of adjudication.

While the proceeds of all life insurance policies are exempt under the law, there seems to be some doubt about the application of the law to the facts in this case, and it being a question of law it is respectfully referred to the Referee for decision.

The bankrupt is securing a duplicate or copy of the policy to file in the case and will be filed as soon as received.

This April 2, 1934.

I hereby set aside said life insurance policy and the cash surrender value thereof as exempt, but that the disability benefits are not exempt but is an asset of the estate.

Respectfully submitted, Edmund St. John, Trustee in Bankruptcy.

[fol. 6] *Duly sworn to by Edmund St. John. Jurat omitted in printing.*

[fol. 7] IN UNITED STATES DISTRICT COURT

AMENDED EXCEPTIONS OF BANKRUPT TO REPORT OF EDMUND ST. JOHN, TRUSTEE—Filed April 16, 1934

George Everett Legg, Bankrupt, excepts to the report of Edmund St. John, Trustee, filed herein on April —, 1934, upon the following grounds:

Said report correctly states that no disability benefits were due under said insurance policy at the date of adjudication, and reports further:

"I hereby set aside said life insurance policy and the cash surrender value thereof as exempt, but that the disability benefits are not exempt but is an asset of the estate."

1. Said life insurance policy No. 5081405-A, on the life of George E. Legg, issued by the Metropolitan Life Insurance Company, and all payments or benefits accruing thereunder after adjudication, are exempt under the Statute laws of the State of Tennessee, and the Trustee should have so held and reported, because:

(a) "An Act entitled an Act exempting in certain cases the proceeds of Life Insurance Policies or Annuities from the claims of creditors" (Ch. 113, Public Acts, 1925), now section 8458 of the Code of Tennessee, provides that:

"The net amount payable under any policy of life insurance or under any annuity contract upon the life of any person made for the benefit of, or assigned to, the wife and/or children, or dependent relatives of such person, shall be exempt from all claims of the creditors of such person", etc.

(b) Under Section 7711 of the Code of Tennessee, the Bankrupt is entitled to a monthly exemption, from the monthly payments in controversy, of $40.00 per month.

[fol. 8] (c) The title to said insurance policy, and to all parts thereof, remains in the bankrupt and does not vest in the Trustee.

2. Without waiving the foregoing exception, if it should be held that same is not well taken, then, in that event, the bankrupt will, invoke the following provision of U. S. C. A., Title 11, section 110 (a) (5), viz:

"When any bankrupt shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representative, he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings."

Pursuant to said provision, if the same be not exempt under the State statutes, the bankrupt has the right to pay or secure the cash surrender value of the insurance policy in controversy, as provided, and upon doing so, shall have,

continue to hold, own and carry said policy, and receive all the benefits thereof, free from the claims of the trustee or creditors.

A photostat copy of the policy is filed, in lieu of the original, and same is referred to and made a part hereof.

Wherefore, the bankrupt excepts to said report, and appeals therefrom to the judgment of the Referee.

Henry Roberts, Caldwell, Brown & O'Dell, Solicitors for Geoge Everett Legg, Bankrupt.

(Here follows photolithograph of Policy, side folio 8A)

METROPOLITAN LIFE INSURANCE COMPANY

NO. 5081405-A —HEREBY INSURES THE LIFE OF—

GEORGE E. LEGG

herein called the Insured, in accordance with the terms of this Policy, No. 5081405

Promises to Pay at its Home Office in the City of New Y

to BEATRICE A. LEGG WIFE

upon receipt of due proof of the death of the Insured and upon the presentation of for endorsement, the sum of ONE HUNDRED

thereafter an Income of ONE HUNDRED I

MONTH on the CORRESPONDING day of THE MONTH

until TWO HUNDRED AND THIRTY NINE such payments, aggregating with said fi

TWENTY FOUR THOUSAND Dollars, shall have been paid. The Comm

of all of the above payments is SEVENTEEN THOUSAND FOUR HUNDRED & FIFTY TWO

(HEREIN CALLED THE AMOUNT OF INSURANCE)

The right on the part of the Insured to change the Beneficiary, in the manner hereinafte

is -- reserved.

METROPOLITAN LIFE INSURANCE COMPANY

—HEREBY INSURES THE LIFE OF—

GEORGE E. LEGG

Insured, in accordance with the terms of this Policy, No. 5081405 A and

to Pay at its Home Office in the City of New York

A. LEGG WIFE Beneficiary,

e proof of the death of the Insured and upon the presentation of this Policy,

sum of ONE HUNDRED Dollars, and

of ONE HUNDRED Dollars every

on the CORRESPONDING day of THE MONTH

D AND THIRTY NINE such payments, aggregating with said first payment

TY FOUR THOUSAND Dollars, shall have been paid. The Commuted value

yments is SEVENTEEN THOUSAND FOUR HUNDRED & FIFTY TWO Dollars.

(HEREIN CALLED THE AMOUNT OF INSURANCE)

part of the Insured to change the Beneficiary, in the manner hereinafter provided,

Promises to Pay at its Home Office in the City of

to BEATRICE A. LEGG WIFE B

upon receipt of due proof of the death of the Insured and upon the presentation of t
for endorsement, the sum of ONE HUNDRED D
thereafter an Income of ONE HUNDRED D
MONTH on the CORRESPONDING day of THE MONTH
until TWO HUNDRED AND THIRTY NINE such payments, aggregating with said fi
TWENTY FOUR THOUSAND Dollars, shall have been paid. The Comm
of all of the above payments is SEVENTEEN THOUSAND FOUR HUNDRED & FIFTY TWO
(HEREIN CALLED THE AMOUNT OF INSURANCE)
The right on the part of the Insured to change the Beneficiary, in the manner hereinafte
is -- reserved.

This Policy is issued in consideration of the Application therefor, copy of which
is attached hereto and made part hereof, and of the payment for said insurance on the life o
named Insured, of FOUR HUNDRED AND TWENTY FIVE Dollars and EIGHTY TH
(which maintains this Policy in force for a period of twelve months from its date of issue, as set f
and of the payment hereafter of a like annual premium on each 28TH
of SEPTEMBER (hereinafter called the due date), until the death of t

The Provisions and Benefits printed or written by the Company on the following pages
of this Policy as fully as if recited over the signatures hereto affixed.

In Witness Whereof, the Metropolitan Life Insurance Company has caused thi
be executed this 28TH day of SEPTEMBER 1927 which is the d
of this Policy.

Jas. S. Roberts
Secretary.

Policy Registrar.

Haley Fisk
Pr

Age 39

A

WHOLE LIFE POLICY.

Income Payments for 20 Years.

Annual Distribution of Divisible Surplus.

★ Form 817 Ord.

CE A. LEGG WIFE Beneficiary,

of due proof of the death of the Insured and upon the presentation of this Policy,
nt, the sum of ONE HUNDRED Dollars, and
ncome of ONE HUNDRED Dollars every
on the CORRESPONDING day of THE MONTH
UNDRED AND THIRTY NINE such payments, aggregating with said first payment
TWENTY FOUR THOUSAND Dollars, shall have been paid. The Commuted value
bove payments is SEVENTEEN THOUSAND FOUR HUNDRED & FIFTY TWO Dollars.
(HEREIN CALLED THE AMOUNT OF INSURANCE)
n the part of the Insured to change the Beneficiary, in the manner hereinafter provided,
served.

Policy is issued in consideration of the Application therefor, copy of which Application
ereto and made part hereof, and of the payment for said insurance on the life of the above
ed, of FOUR HUNDRED AND TWENTY FIVE Dollars and EIGHTY THREE cents,
ains this Policy in force for a period of twelve months from its date of issue, as set forth below)
ayment hereafter of a like annual premium on each 28TH day
SEPTEMBER (hereinafter called the due date), until the death of the Insured.

rovisions and Benefits printed or written by the Company on the following pages are a part
as fully as if recited over the signatures hereto affixed.

itness Whereof, the Metropolitan Life Insurance Company has caused this Policy to
his 28TH day of SEPTEMBER 1927 which is the date of issue

Secretary. *Policy Registrar.* *President.*

Age 39

WHOLE LIFE POLICY.

Income Payments for 20 Years.

Annual Distribution of Divisible Surplus.

PROVISIONS AND BENEFITS

1. Payment of Premiums:—All premiums are payable, on or before their due dates, at the Home Office of the Company, or to an authorized Agent of the Company, but only in exchange for the Company's official premium receipt signed by the President, Vice-President, Actuary, Treasurer or Secretary of the Company and countersigned by the Agent or other authorized representative of the Company receiving the premium.

The payment of a premium shall not maintain this Policy in force beyond the due date when the next premium is payable, except as hereinafter provided.

A grace period of thirty-one days, without interest charge, will be granted for the payment of every premium after the first, during which period the insurance shall continue in force. At the death of the Insured any unpaid premium for the current policy year shall be considered as an indebtedness to the Company for which this Policy is security.

2. Age:—If the age of the Insured has been misstated, any amounts payable hereunder shall be such as the premium paid would have purchased at the correct age.

3. Incontestability:—This Policy shall be incontestable after it has been in force for a period of two years from its date of issue, except for non-payment of premiums, and except as to provisions and conditions relating to benefits in the event of total and permanent disability, and those granting additional insurance specifically against death by accident, contained in any supplementary contract attached to, and made part of, this Policy.

4. Entire Contract:—This Policy and the application therefor constitute the entire contract between the parties, and all statements made by the Insured, shall, in the absence of fraud, be deemed represen warranties, and no statement shall avoid this Policy or be of a claim hereunder unless it be contained in the applicatio copy of such application is attached to this Policy when issue

5. Suicide:—If the Insured within one year from the da die by his own hand or act, whether sane or insane, the liability hereunder shall be limited to an amount equal to the premiums received, without interest.

6. Change of Beneficiary:—When the right to chan is reserved, and if there be no written assignment of this Polic Company, the Insured may (while this Policy is in force) desig ficiary, with or without reserving the right of change thereafter notice thereof at the Home Office of the Company accompani for suitable endorsement. Such change shall take effect upo the same on this Policy by the Company. If any beneficiar the Insured the interest of such beneficiary shall vest in th otherwise provided herein.

7. Assignment:—No assignment of this Policy shall be Company unless it be executed upon blanks furnished by the C with the Company at its Home Office. The Company assume to the validity and sufficiency of any assignment.

8. Agents:—No Agent is authorized to waive forfe amend this Policy, to accept premiums in arrears or to exten any premium.

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9. Options on Surrender or Lapse:—After premiums for two full years shall have been paid on this Policy, the Owner hereof or the Assignee of record, if any, upon written request filed with the Company at its Home Office, together with the presentation of this Policy for legal surrender or endorsement within three months after the due date of any premium in default, shall be entitled to one of the following options:

(*a*) CASH SURRENDER VALUE—

To receive the Cash Surrender Value which shall be the Reserve on this Policy (omitting fractions of a dollar per thousand of insurance) and on any outstanding Paid-up Additions at due date of premium in default less a surrender charge during the second policy year of not more than two and one-half per cent of the amount of insurance under this Policy. The Company shall deduct from such Cash Surrender Value any indebtedness to the Company for which this Policy is security, the remainder being hereinafter referred to as the "net sum"; or,

(*b*) PAID-UP WHOLE LIFE INSURANCE—

To have the Insurance continued in force from the due date of premium in default for a reduced amount of non-participating Paid-up Whole Life Insurance, payable in one sum upon receipt of due proof of the death of the Insured. Such Paid-up Whole Life Insurance shall be for such an amount as the net sum described under (*a*) above will purchase (in even dollars) at the then attained age of the Insured when applied as a net single premium. Such Paid-up Whole Life Insurance may be surrendered at any time for its then Cash Surrender Value (*viz.*, its full Reserve at the date of such surrender less any indebtedness to the Company on such Paid-up Whole Life Insurance); or,

(*c*) PAID-UP TERM INSURANCE—

To have the Insurance continued in force from the due date of premium in default as non-participating Paid-up Term Insurance. If there be no indebtedness to the Company for which this Policy is security, such Paid up

TABLE OF GUARANTEED LOAN VA AND SURRENDER OPTI

Computed in accordance with Paragraph 9 for a Policy free from without paid-up additions.

END OF YEAR	CASH VALUE OR LOAN VALUE	PAID-UP NON-PARTICIPATING WHOLE LIFE INSURANCE PAYABLE IN ONE SUM	NON-P TERM CON Years
2	$ 398.	$ 949.	2
3	$ 757.	$ 1770.	4
4	$ 1023.	$ 2346.	5
5	$ 1302.	$ 2914.	7
6	$ 1585.	$ 3476.	8
7	$ 1874.	$ 4028.	9
8	$ 2175.	$ 4569.	10
9	$ 2482.	$ 5099.	11
10	$ 2796.	$ 5620.	11
11	$ 3113.	$ 6126.	12
12	$ 3442.	$ 6621.	12
13	$ 3773.	$ 7106.	13
14	$ 4108.	$ 7574.	13

PROVISIONS AND BENEFITS

nt of Premiums:— All premiums are payable, on or before the Home Office of the Company, or to an authorized Agent but only in exchange for the Company's official premium the President, Vice-President, Actuary, Treasurer or Secretary and countersigned by the Agent or other authorized repre- ompany receiving the premium

nt of a premium shall not maintain this Policy in force beyond the next premium is payable, except as hereinafter provided iod of thirty-one days, without interest charge, will be granted every premium after the first, during which period the insur- e in force. At the death of the Insured any unpaid premium ey year shall be considered as an indebtedness to the Company cy is security

If the age of the Insured has been misstated, any amounts pay- all be such as the premium paid would have purchased at

ntability:- This Policy shall be incontestable after it has a period of two years from its date of issue, except for non- ums, and except as to provisions and conditions relating to nt of total and permanent disability, and those granting addi- ecifically against death by accident, contained in any supple- attached to, and made part of, this Policy.

Contract:—This Policy and the application therefor con- ntract between the parties, and all statements made by the Insured, shall, in the absence of fraud, be deemed representations and not warranties, and no statement shall avoid this Policy or be used in defense of a claim hereunder unless it be contained in the application therefor and a copy of such application is attached to this Policy when issued.

5. Suicide:—If the Insured within one year from the date of issue hereof die by his own hand or act, whether sane or insane, the liability of the Company hereunder shall be limited to an amount equal to the premiums which have been received, without interest.

6. Change of Beneficiary:—When the right to change the beneficiary is reserved, and if there be no written assignment of this Policy on file with the Company, the Insured may (while this Policy is in force) designate a new beneficiary, with or without reserving the right of change thereafter, by filing written notice thereof at the Home Office of the Company accompanied by this Policy for suitable endorsement. Such change shall take effect upon endorsement of the same on this Policy by the Company. If any beneficiary shall die before the Insured the interest of such beneficiary shall vest in the Insured, unless otherwise provided herein.

7. Assignment:—No assignment of this Policy shall be binding upon the Company unless it be executed upon blanks furnished by the Company and filed with the Company at its Home Office. The Company assumes no obligation as to the validity and sufficiency of any assignment.

8. Agents:—No Agent is authorized to waive forfeitures, to alter or amend this Policy, to accept premiums in arrears or to extend the due date of any premium.

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n on Surrender or Lapse:—After premiums for two full en paid on this Policy, the Owner hereof or the Assignee of written request filed with the Company at its Home Office, esentation of this Policy for legal surrender or endorsement is after the due date of any premium in default, shall be e following options:

URRENDER VALUE—

he Cash Surrender Value which shall be the Reserve on this ractions of a dollar per thousand of insurance) and on any up Additions at due date of premium in default, less a sur- ing the second policy year of not more than two and one- the amount of insurance under this Policy. The Company such Cash Surrender Value any indebtedness to the Com- n Policy is security; the remainder being hereinafter referred ; or,

WHOLE LIFE INSURANCE—

e Insurance continued in force from the due date of premium duced amount of non-participating Paid-up Whole Life Insur- e sum upon receipt of due proof of the death of the Insured ole Life Insurance shall be for such an amount as the net sum d) above will purchase (in even dollars) at the then attained when applied as a net single premium. Such Paid-up Whole ay be surrendered at any time for its then Cash Surrender Reserve at the date of such surrender less any indebtedness such Paid-up Whole Life Insurance); or,

TERM INSURANCE—

Insurance continued in force from the due date of premium participating Paid-up Term Insurance. If there be no Company for which this Policy is security, such Paid-up

TABLE OF
GUARANTEED LOAN VALUES AND SURRENDER OPTIONS

Computed in accordance with Paragraph 9 for a Policy free from indebtedness and without paid-up additions.

END OF YEAR	CASH VALUE OR LOAN VALUE	PAID-UP NON-PARTICIPATING WHOLE LIFE INSURANCE PAYABLE IN ONE SUM	PAID-UP NON-PARTICIPATING TERM INSURANCE CONTINUED FOR	
			Years	Months
2	$ 398.	$ 949.	2	4
3	$ 757.	$ 1770.	4	6
4	$ 1023.	$ 2346.	5	11
5	$ 1302.	$ 2914.	7	1
6	$ 1585.	$ 3476.	8	6
7	$ 1874.	$ 4028.	9	7
8	$ 2175.	$ 4569.	10	6
9	$ 2482.	$ 5099.	11	4
10	$ 2796.	$ 5620.	11	11
11	$ 3113.	$ 6126.	12	6
12	$ 3442.	$ 6621.	12	11
13	$ 3773.	$ 7106.	13	3
14	$ 4108.	$ 7574.	13	6

4. Entire Contract:—This Policy and the application therefor constitute the entire contract between the parties, and all statements made by the [illegible] amend this Policy, to accept [illegible] any premium.

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9. Options on Surrender or Lapse:—After premiums for two full years shall have been paid on this Policy, the Owner hereof or the Assignee of record, if any, upon written request filed with the Company at its Home Office, together with the presentation of this Policy for legal surrender or endorsement within three months after the due date of any premium in default, shall be entitled to one of the following options:

(*a*) CASH SURRENDER VALUE—

To receive the Cash Surrender Value which shall be the Reserve on this Policy (omitting fractions of a dollar per thousand of insurance) and on any outstanding Paid-up Additions at due date of premium in default less a surrender charge during the second policy year of not more than two and one-half per cent of the amount of insurance under this Policy. The Company shall deduct from such Cash Surrender Value any indebtedness to the Company for which this Policy is security, the remainder being hereinafter referred to as the "net sum"; or,

(*b*) PAID-UP WHOLE LIFE INSURANCE—

To have the Insurance continued in force from the due date of premium in default for a reduced amount of non-participating Paid-up Whole Life Insurance, payable in one sum upon receipt of due proof of the death of the Insured. Such Paid-up Whole Life Insurance shall be for such an amount as the net sum described under (*a*) above will purchase (in even dollars) at the then attained age of the Insured when applied as a net single premium. Such Paid-up Whole Life Insurance may be surrendered at any time for its then Cash Surrender Value (*viz.*, its full Reserve at the date of such surrender less any indebtedness to the Company on such Paid-up Whole Life Insurance); or,

(*c*) PAID-UP TERM INSURANCE—

To have the Insurance continued in force from the due date of premium in default as non-participating Paid-up Term Insurance. If there be no indebtedness to the Company for which this Policy is security, such Paid-up Term Insurance shall, upon receipt of due proof of the death of the Insured within the term, be paid as an income and shall be for the amount of insurance under this Policy, plus any outstanding Paid-up Additions, and for a term (in years and whole number of months) such as the Cash Surrender Value as defined under (*a*) above will purchase at the then attained age of the Insured when applied as a net single premium. If there be any such indebtedness the amount of the Paid-up Term Insurance will be reduced in such proportion as the indebtedness bears to the Cash Surrender Value as defined under (*a*) above and shall, upon receipt of due proof of the death of the Insured within the term, be paid in one sum. Such Paid-up Term Insurance may be surrendered at any time for its then Cash Surrender Value (*viz.*, its full Reserve Value at the date of surrender).

In the event of default in the payment of any premium, after premiums for two full years shall have been paid on this Policy, if the Owner or the Assignee of record, if any, shall not avail himself of one of the foregoing options, in the manner hereinbefore provided, within three months after the due date of the premium in default, this Policy will be continued by the Company for a reduced amount of non-participating Paid-up Whole Life Insurance as provided under Option (*b*) above.

The Company at its discretion may defer the payment of any Cash Surrender Value under Options (*a*), (*b*) or (*c*) as above for a period not exceeding ninety days after the application therefor is received by the Company.

The Reserve held for this Policy and for any Paid-up Additions and the Net Single Premiums mentioned above, shall be computed upon the American Experience Table of Mortality with interest at three and one-half per centum per annum.

TABLE OF
GUARANTEED LOAN VAL
AND SURRENDER OPTIO

Computed in accordance with Paragraph 9 for a Policy free from i
without paid-up additions.

END OF YEAR	CASH VALUE OR LOAN VALUE	PAID-UP NON-PARTICIPATING WHOLE LIFE INSURANCE PAYABLE IN ONE SUM	PA NON-PAR TERM I CONTI Years
2	$ 398.	$ 949.	2
3	$ 757.	$ 1770.	4
4	$ 1023.	$ 2346.	5
5	$ 1302.	$ 2914.	7
6	$ 1585.	$ 3476.	8
7	$ 1874.	$ 4028.	9
8	$ 2175.	$ 4569.	10
9	$ 2482.	$ 5099.	11
10	$ 2796.	$ 5620.	11
11	$ 3113.	$ 6126.	12
12	$ 3442.	$ 6621.	12
13	$ 3773.	$ 7106.	13
14	$ 4108.	$ 7574.	13
15	$ 4450.	$ 8031.	13
16	$ 4796.	$ 8475.	13
17	$ 5145.	$ 8901.	13
18	$ 5497.	$ 9316.	13
19	$ 5853.	$ 9717.	13
20	$ 6209.	$ 10105.	13
25	$ 8003.	$ 11836.	13
30	$ 9738.	$ 13239.	11

The values shown in the above table are for complet
with surrender charge, if any, deducted. Values for late
computed upon the same basis and furnished on request.

The Cash Surrender Value at any time other than at
period for which premiums have been paid shall be the
Value at the end of such period less interest from the date
the end of such period at the rate of six per cent per annu

The Loan Values provided for in the above table fo
policy year can be obtained at any time during such pol
manner and according to the following clause entitled "Lo

tract between the parties, and all statements made by the

any premium.

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on Surrender or Lapse:—After premiums for two full paid on this Policy, the Owner hereof or the Assignee of written request filed with the Company at its Home Office, sentation of this Policy for legal surrender or endorsement after the due date of any premium in default, shall be following options:

RENDER VALUE—

e Cash Surrender Value which shall be the Reserve on this ctions of a dollar per thousand of insurance) and on any Additions at due date of premium in default less a sur- g the second policy year of not more than two and one- e amount of insurance under this Policy. The Company such Cash Surrender Value any indebtedness to the Com- Policy is security, the remainder being hereinafter referred ; or,

WHOLE LIFE INSURANCE—

Insurance continued in force from the due date of premium ced amount of non-participating Paid-up Whole Life Insur- e sum upon receipt of due proof of the death of the Insured. le Life Insurance shall be for such an amount as the net sum) above will purchase (in even dollars) at the then attained when applied as a net single premium. Such Paid up Whole y be surrendered at any time for its then Cash Surrender Reserve at the date of such surrender less any indebtedness such Paid-up Whole Life Insurance); or,

TERM INSURANCE—

Insurance continued in force from the due date of premium participating Paid-up Term Insurance. If there be no Company for which this Policy is security, such Paid up ll, upon receipt of due proof of the death of the Insured paid as an income and shall be for the amount of insurance plus any outstanding Paid-up Additions, and for a term (in number of months) such as the Cash Surrender Value as ove will purchase at the then attained age of the Insured net single premium. If there be any such indebtedness the id-up Term Insurance will be reduced in such proportion as ars to the Cash Surrender Value as defined under (*a*) above ipt of due proof of the death of the Insured within the term. Such Paid-up Term Insurance may be surrendered at any Cash Surrender Value (*viz.*, its full Reserve Value at the date

of default in the payment of any premium, after premiums shall have been paid on this Policy, if the Owner or the If any, shall not avail himself of one of the foregoing options, reinbefore provided, within three months after the due date default; this Policy will be continued by the Company for of non-participating Paid-up Whole Life Insurance as pro- (*b*) above.

ny at its discretion may defer the payment of any Cash der Options (*a*), (*b*) or (*c*) as above for a period not exceeding e application therefor is received by the Company.

held for this Policy and for any Paid-up Additions and the s mentioned above, shall be computed upon the American of Mortality with interest at three and one-half per centum

TABLE OF
GUARANTEED LOAN VALUES AND SURRENDER OPTIONS

Computed in accordance with Paragraph 9 for a Policy free from indebtedness and without paid-up additions.

END OF YEAR	CASH VALUE OR LOAN VALUE	PAID-UP NON-PARTICIPATING WHOLE LIFE INSURANCE PAYABLE IN ONE SUM	PAID-UP NON-PARTICIPATING TERM INSURANCE CONTINUED FOR Years	Months
2	$ 398.	$ 949.	2	4
3	$ 757.	$ 1770.	4	6
4	$ 1023.	$ 2346.	5	11
5	$ 1302.	$ 2914.	7	3
6	$ 1585.	$ 3476.	8	6
7	$ 1874.	$ 4028.	9	7
8	$ 2175.	$ 4569.	10	6
9	$ 2482.	$ 5099.	11	4
10	$ 2796.	$ 5620.	11	11
11	$ 3113.	$ 6126.	12	6
12	$ 3442.	$ 6621.	12	11
13	$ 3773.	$ 7106.	13	3
14	$ 4108.	$ 7574.	13	6
15	$ 4450.	$ 8031.	13	8
16	$ 4796.	$ 8475.	13	10
17	$ 5145.	$ 8901.	13	10
18	$ 5497.	$ 9316.	13	10
19	$ 5853.	$ 9717.	13	10
20	$ 6209.	$ 10105.	13	9
25	$ 8003.	$ 11836.	13	0
30	$ 9738.	$ 13239.	11	10

TM

The values shown in the above table are for complete policy years with surrender charge, if any, deducted. Values for later years will be computed upon the same basis and furnished on request.

The Cash Surrender Value at any time other than at the end of the period for which premiums have been paid shall be the Cash Surrender Value at the end of such period less interest from the date of payment to the end of such period at the rate of six per cent per annum.

The Loan Values provided for in the above table for the end of a policy year can be obtained at any time during such policy year in the manner and according to the following clause entitled "Loans."

Total and Permanent Disability
WAIVER OF PREMIUMS AND PAYMENT OF MONTHLY INCOME

Supplementary Contract attached to and made part of Life Insurance Policy No. 5081405-A
issued on the life of GEORGE E. LEGG

Metropolitan Life Insurance Company

IN CONSIDERATION of the application for this Contract, as contained in the application for said Policy, the latter being the basis for the issuance hereof, and in consideration of FORTY NINE dollars and THIRTY NINE cents, payable ANN as an additional premium herefor, such payment being simultaneous with, and under the same conditions as, the regular premium under the said Policy, except as hereinafter provided.

HEREBY AGREES, that upon receipt by the Company at its Home Office in the City of New York of due proof, on forms which will be furnished by the Company, on request, that the insured has, while said Policy and this Supplementary Contract are in full force and prior to the anniversary date of said Policy nearest to the sixtieth birthday of the insured, become totally and permanently disabled, as the result of bodily injury or disease occurring and originating after the issuance of said Policy, so as to be prevented thereby from engaging in any occupation and performing any work for compensation or profit, and that such disability has already continued uninterruptedly for a period of at least three months, it will, during the continuance of such disability,

1. Waive the payment of each premium falling due under said Policy and this Supplementary Contract, and,
2. Pay to the insured, or a person designated by him for the purpose, or if such disability is due to, or is accompanied by, mental incapacity, to the beneficiary of record under said Policy, a monthly income of $10 for each $1,000 of insurance, or of commuted value of instalments, if any, under said Policy.

Such waiver shall begin as of the anniversary of said Policy next succeeding the date of the commencement of such disability, and such payments shall begin as of the date of the commencement of such disability, provided, however, that in no case shall such waiver begin as of any such anniversary occurring, nor shall such payments begin as of a date, more than six months prior to the date of receipt of the required proof.

The disability benefit herein provided shall not be payable if, at the date of disability, the said Policy shall be in force by virtue of any non-forfeiture provisions thereof, or if disability shall have resulted from bodily injuries sustained by the insured while participating in aviation or aeronautics, except as a fare-paying passenger, or sustained while the insured is in the Military or Naval Service in time of war, or as the result of violation of law by the insured.

Notwithstanding that proof of disability may have been accepted by the Company as satisfactory, the insured shall at any time, on demand from the Company, furnish due proof of the continuance of such disability, but after such disability shall have continued for two full years the Company will not demand such proof more often than once in each subsequent year. If the insured shall fail to furnish such proof, or if the insured shall be able to perform any work or engage in any business whatsoever for compensation or profit, the monthly income herein provided shall immediately cease, and all premiums thereafter falling due shall be payable according to the terms of said Policy and of this Supplementary Contract.

The waiver of premiums and monthly income payments herein provided shall be in addition to all other benefits under said Policy, provided, however, that, if there be indebtedness to the Company under said Policy, the interest on such indebtedness shall, if not otherwise paid, be deducted from said monthly income payments. Monthly income payments shall not be subject to commutation.

If premiums continue to be payable under the terms of said Policy after the anniversary of said Policy nearest to the sixtieth birthday of the insured, this Supplementary Contract shall, nevertheless, terminate and be of no further force or effect and the additional premium on account hereof shall cease to be payable, both on the anniversary of said Policy nearest to the sixtieth birthday of the insured.

The insurance under this Supplementary Contract shall be suspended while the Insured is in the Military or Naval Service in time of war, in which event that portion of the additional premium unearned during the period of such suspense shall be refunded.

This Supplementary Contract may be canceled by the insured on the due date of any premium or instalment thereof, by written request to the Company, together with the return of said Policy and this Supplementary Contract to the Company and the endorsement of such cancelation hereon.

This Supplementary Contract shall automatically terminate and be of no further force or effect if any premium on said Policy, or on this Supplementary Contract, shall remain unpaid at the end of the period of grace allowed under said Policy for payment of premium thereunder or if said Policy be surrendered or converted under one of its non-forfeiture provisions or otherwise terminated.

Whenever this Supplementary Contract shall be canceled or otherwise terminated, the additional premium shall no longer be payable.

This Supplementary Contract shall be deemed to be a part of the above numbered Policy and the provisions of said Policy concerning declarations and representations by the insured, restrictions, payment of premiums, change of beneficiary, and assignment, are hereby referred to and by such reference made a part hereof. No other provisions of said Policy shall be held or deemed to be a part hereof, except

(*a*) The provision of the said Policy as to incontestability shall apply hereto, but shall not preclude the Company from requiring as a condition to recovery hereunder, due proof of such total and permanent disability as entitles him to the benefits hereof.

(*b*) The provision of said Policy as to reinstatement shall apply hereto, except that this Supplementary Contract shall not be reinstated unless said Policy is in force and no premium is in default thereon, or unless said Policy is reinstated at the time of reinstatement of this Supplementary Contract.

No change in, addition to, waiver or permit, under this Supplementary Contract, shall be valid unless endorsed hereon and signed by an executive officer of the Company.

In Witness Whereof the Metropolitan Life Insurance Company has caused this Supplementary Contract to be executed this 28TH **day of** SEPT. 27

Jas. E. Roberts
Secretary.

Haley Fiske.
President.

Form 688 Ord.
Nov. 1922
PRINTED IN U.S.A.

PROVISIONS AND BENEFITS

10. Reinstatement If this Policy shall lapse in consequence of default in payment of any premium it may be reinstated at any time, unless the Cash Surrender Value has been paid or the non-participating Paid-up Term Insurance period has expired, upon the production of evidence of insurability satisfactory to the Company and the payment of all overdue premiums with interest at six per centum per annum to the date of reinstatement. Any loan which existed at date of default, together with interest at the same rate to the date of reinstatement, may be either repaid in cash, or if not in excess of the cash value at date of reinstatement, continued as an indebtedness for which this Policy shall be security.

11. Loans: At any time after premiums for two full years shall have been paid and while this Policy is in force, except when continued as non-participating Paid-up Term Insurance, the Company, on proper and lawful assignment of this Policy and presentation of it for endorsement, will loan to the Owner or the assignee of record, if any, on the sole security thereof, an amount not greater than the Cash Surrender Value at the end of the current policy year. Any indebtedness to the Company on this Policy, at the date of said loan, together with interest in advance on said loan to the end of the current policy year and any unpaid premium for the current policy year, will be deducted from the amount of said loan. Said loan will bear interest at the rate of six per centum per annum payable annually on each anniversary of this Policy. If interest be not paid when due, it shall be added to the principal, until the entire outstanding indebtedness shall equal the Cash Surrender Value, in which event this Policy shall become null and void, after one month's notice shall have been mailed by the Company to the last known address of the Insured and of the Assignee of Record, if any. When this Policy is continued for a reduced amount of non-participating Paid-up Whole Life Insurance, payment of interest on any loan each year, in advance, to the end of the current policy year, will be required. At the option of the Company, the granting of a loan may be deferred for a period not exceeding ninety days after application therefor is received by the Company, unless such loan is to be applied solely to the payment of premiums due to the Company. At any time while this Policy is in force the whole or any part of any such indebtedness may be repaid. At the death of the Insured any such indebtedness to the Company will be secured in the manner set forth in Clause 12 hereof, next following, unless the amount payable under this policy is paid in one sum, in which event any such indebtedness will be deducted from the amount payable hereunder.

12. Indebtedness:—If when a claim arises under this Po death of the Insured, and the amount of Insurance has not been provided under Clauses 9 (*a*) or 9 (*b*), any indebtedness to the C which this Policy is security may be repaid, but if not repaid, the I ments, payable in the manner herein provided, will each be reduc proportion as the indebtedness bears to the amount of insurance as the first page of this Policy. But if such reduction shall bring the any Income payment below $10, then the amount of the indebte be deducted from the aforesaid amount of insurance and the rema be paid in one sum.

13. Participation in Divisible Surplus:—This Policy is a p contract while in force as a premium-paying policy, and the Co annually, as of the thirty-first day of December of each year, asc apportion any divisible surplus accruing hereon. (See "Notice holder" below.) Such divisible surplus will be payable on the next a of this Policy following the next-succeeding thirtieth day of April at the option of the Insured, or of the Assignee of record, if any, be paid in cash; or, (*b*) applied within the grace period towards the p any premium or premiums; or, (*c*) applied to the purchase of a pa paid-up addition to the sum insured; or, (*d*) left to accumulate to of this Policy at such rate of interest as the Company may declar funds, but not less than three and one-half per centum per annum, a at maturity of this Policy or withdrawable in cash on any anniversa this Policy. If no other option is selected by the Insured, or by the record, if any, within three months after the date when such divisible payable, then the divisible surplus will be applied to the purchase of addition to the sum insured. Such Paid-up addition may be surre any time for a cash value at least equal to the amount of the surplus applied to its purchase.

If, when this Policy becomes a claim by death, there are, to th this Policy, any paid-up additions or any apportioned divisible su with the Company to accumulate at interest or any apportione surplus unpaid, such amounts may be paid in cash or applied to in amount of each Income payment, if settlement under this Policy is an income payment basis.

NOTICE TO POLICY-HOLDER.—*The divisible surplus accruing und of this class will probably not be sufficient to enable the Company to apportionment under this Policy before the end of the third year.*

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14. Manner of Settlement at Death: Upon the death of the Insured, the beneficiary of record at the time of such death shall present this Policy to the Company at its Home Office for endorsement covering the Income payments or for surrender if the amount payable hereunder is to be paid in one sum. If there be no beneficiary of record, original or substitute, when this Policy becomes a claim by the death of the Insured, the amount payable under this Policy, plus any outstanding paid-up addition and less any indebtedness for which this Policy is security, will be paid in one sum to the executors, administrators or assigns of the Insured.

If the beneficiary survive the Insured but die before receiving all the Income payments, the remaining payments shall be commuted at the rate of three and one-half per centum per annum compound interest and be paid in one sum to the executors, administrators or assigns of such beneficiary, unless otherwise directed by the Insured in writing and endorsed on the Policy by the Company at its Home Office during his lifetime.

Income payments will be made by check upon which the personal endorsement of the Payee will be required, but the Company may at any time require satisfactory evidence that the beneficiary is living, and if not living the shall be furnished with satisfactory evidence of a claimant's authority the commuted value of any Income payments remaining unpaid.

If such right is given to the beneficiary by the Insured, an payments yet to be made may at any time be commuted at the rate of one-half per centum per annum compound interest and be paid in one no beneficiary may assign or commute Income payments unless s has been given by the Insured and is endorsed on the Policy by the Co its Home Office during the lifetime of the Insured.

The Income payments are based upon an assumed interest o three and one-half per centum per annum, but if in any year the Comp declare for that year upon like funds held by it, a greater interest rate t and one-half per centum, the Income payment falling due on the next sary of the first payment shall be increased by the extra interest earne mean fund held on account of this Policy for that year.

PROVISIONS AND BENEFITS

rement If this Policy shall lapse in consequence of default premium it may be reinstated at any time, unless the Cash been paid or the non-participating Paid-up Term Insurance upon the production of evidence of insurability satisfactory the payment of all overdue premiums with interest at six um to the ate of reinstatement. Any loan which existed at ther with terest at the same rate to the date of reinstate- repaid in cash, or if not in excess of the cash value at date of, nued as an indebtedness for which this Policy shall be security

—At any time after premiums for two full years shall have e this Policy s in force, except when continued as non- up Term Insurance, the Company, on proper and lawful Policy and presentation of it for endorsement, will loan to ssignee of record, if any, on the sole security thereof, an than the Cash Surrender Value at the end of the current indebtedness to the Company on this Policy, at the date er with interest in advance on said loan to the end of the and any unpaid premium for the current policy year, om the amount of said loan. Said loan will bear interest r centum per annum payable annually on each anniversary interest be not paid when due, it shall be added to the e entire outstanding indebtedness shall equal the Cash which event this Policy shall become null and void, after shall have been mailed by the Company to the last known ed and of the Assignee of Record, if any. When this Policy reduced amoun of non-participating Paid-up Whole Life of interest on any loan each year, in advance, to the end y year, will be required. At the option of the Company, loan may be deferred for a period not exceeding ninety days refor is received by the Company, unless such loan is to be payment of premiums due to the Company. At any time in force the whole or any part of any such indebtedness the death of the nsured any such indebtedness to the ecured in the manne set forth in Clause 12 hereof, next amount payable under this policy is paid in one sum, in ch indebtedness will be deducted from the amount payable

12. Indebtedness:—If when a claim arises under this Policy by the death of the Insured, and the amount of Insurance has not been reduced as provided under Clauses 9 (*a*) or 9 (*b*), any indebtedness to the Company for which this Policy is security may be repaid, but if not repaid, the Income payments, payable in the manner herein provided, will each be reduced in such proportion as the indebtedness bears to the amount of insurance as set forth on the first page of this Policy. But if such reduction shall bring the amount of any Income payment below $10, then the amount of the indebtedness shall be deducted from the aforesaid amount of insurance and the remainder shall be paid in one sum.

13. Participation in Divisible Surplus:—This Policy is a participating contract while in force as a premium-paying policy, and the Company will annually, as of the thirty-first day of December of each year, ascertain and apportion any divisible surplus accruing hereon. (See "Notice to Policy-holder" below.) Such divisible surplus will be payable on the next anniversary of this Policy following the next succeeding thirtieth day of April and may, at the option of the Insured, or of the Assignee of record, if any, be either (*a*) paid in cash; or, (*b*) applied within the grace period towards the payment of any premium or premiums; or, (*c*) applied to the purchase of a participating paid-up addition to the sum insured; or, (*d*) left to accumulate to the credit of this Policy at such rate of interest as the Company may declare on such funds, but not less than three and one-half per centum per annum, and payable at maturity of this Policy or withdrawable in cash on any anniversary date of this Policy. If no other option is selected by the Insured, or by the Assignee of record, if any, within three months after the date when such divisible surplus is payable, then the divisible surplus will be applied to the purchase of a Paid-up addition to the sum insured. Such Paid-up addition may be surrendered at any time for a cash value at least equal to the amount of the surplus originally applied to its purchase.

If, when this Policy becomes a claim by death, there are, to the credit of this Policy, any paid-up additions or any apportioned divisible surplus left with the Company to accumulate at interest or any apportioned divisible surplus unpaid, such amounts may be paid in cash or applied to increase the amount of each Income payment, if settlement under this Policy is made on an income payment basis.

NOTICE TO POLICY-HOLDER.—*The divisible surplus accruing under policies of this class will probably not be sufficient to enable the Company to make any apportionment under this Policy before the end of the third year.*

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t of Settlement at Death:—Upon the death of the Insured, record at the time of such death shall present this Policy at its Home Office for endorsement covering the Income ender if the amount payable hereunder is to be paid in be no beneficiary of record, original or substitute, when a claim by the death of the Insured, the amount payable us any outstanding paid-up addition and less any indebted- his Policy is security, will be paid in one sum to the rators or assigns of the Insured.

iary survive the Insured but die before receiving all the he remaining payments shall be commuted at the rate of r centum per annum compound interest and be paid in one , administrators or assigns of such beneficiary, unless other- Insured in writing and endorsed on the Policy by the me Office during his lifetime.

nts will be made by check upon which the personal endorse ill be required, but the Company may at any time require satisfactory evidence that the beneficiary is living, and if not living the Company shall be furnished with satisfactory evidence of a claimant's authority to receive the commuted value of any Income payments remaining unpaid.

If such right is given to the beneficiary by the Insured, any Income payments yet to be made may at any time be commuted at the rate of three and one-half per centum per annum compound interest and be paid in one sum, but no beneficiary may assign or commute Income payments unless such right has been given by the Insured and is endorsed on the Policy by the Company at its Home Office during the lifetime of the Insured.

The Income payments are based upon an assumed interest earning of three and one-half per centum per annum, but if in any year the Company shall declare for that year upon like funds held by it, a greater interest rate than three and one-half per centum, the Income payment falling due on the next anniversary of the first payment shall be increased by the extra interest earned by the mean fund held on account of this Policy for that year.

Copy of application attached hereto.

Part A — Application to the METROPOLITAN LIFE INSURANCE COMPANY — Form 066 E-1 — ORDINARY DEPT. — TO BE USED WHEN AMOUNT APPLIED FOR IS OVER $1,000—ORDINARY OR INTERMEDIATE

1. FULL NAME of Person whose life is to be insured: Percy Edward Legg
2. Residence: No. 520 Street: Penny (City or Post Office): Bristol State: Tenn. Va.
3. How long have you resided at the address given? 2 yrs
4. If less than one year give previous address:
5. To what address shall receipts be mailed? Residence / Place of Business
6. Place of birth: Lee Co. Va. (Town or City / State)
7. Date of birth: Month Dec. Day 28 Year 1888 — Age nearest birthday: 39 Years
8. Single, Married, Widower or Widow? Divorced or Separated? Married
9. Occupation. If more than one, state all. Nature of Employer's business: Prop. Bristol Plumbing & Heating Co.
10. Exact duties of Occupation: Office & Sales
11. Any change in Occupation contemplated? If yes, give particulars: No
12. Place of Business. (City, Street and No.) Is this employment: 28-6 St. Self
13. Former Occupations. (Within the last two years): Plumbing & Gas Fitting
14. Do you, within the next twelve months, contemplate journeying outside the United States or Canada or making an ocean trip? If yes, state when, where to, for what purpose and for how long? No
15. Have you any intention of making aerial flights within the next two years? If so, give particulars. No
16. Have you any other application or negotiation for life, accident, or health insurance now pending or contemplated? If yes, give particulars. No

14. Amount of Insurance desired: $ 5000 — Ordinary / Intermediate — Prem. Payable: Annually / Semi-annually / Monthly
15. Plan of Insurance or designation in Table form:
16. Beneficiary (in case of your death). (Person): Bertha A. Legg
Relationship of the named Beneficiary:
Corporation
P. O. Address: 520 Penn
(b) Do you reserve the right to change the beneficiary from time to time? (In the event of Beneficiary herein designated
17. Is any one regularly dependent on you for support? If so, give particulars.
18. Are you now insured in this Company (other than Group)? If so, give particulars.

Name of Company	Amount	Kind of Policy	Year Issued	If Converted or Increased give Policy No.
	$5000	Ord. Life		
	1000			
	$6000			

What amount of the above insurance carries:
(a) Disability Provisions? $
(b) Accidental Death benefits? (Double Indemnity) $
19. If you are applying for Disability Provisions, state amount of weekly benefit carried under Health Policies with this or any other Company: $
20. Is the policy for which you are now applying intended to take the place of insurance carried with this or any other Company? If yes, give particulars.
21. What amount has been paid in advance on account of the first premium? $
22. Corrections and Amendments. (For Home Office use.)

23. Have you ever applied to any Company or Association without receiving insurance in the amount or on the plan applied for, or at your age, or at the normal premium thereof? If yes, give particulars. No

Company or Association	Year	If not issued or applied for, or what request declined	Declined or postponed	Withdrawn or not taken
None				

To be completed in the case of a woman Applicant, if ever married.

24. What are (in full) the sources of your income?
25. Number of children living, age and occupation of each.
26. Husband's name
(a) Business
(b) In what Companies and for what amount is he insured in your favor?
(c) If not insured in your favor, state why not
(d) Is application on his life being submitted?

It is understood and agreed: 1. That the foregoing statements and answers are correct and wholly true, and, together with the answers to questions on Part B hereof, they shall form the basis of the contract of insurance, if one be issued.

2. That no agent, medical examiner or any other person, except the Officers of the Company, have power on behalf of the Company (a) to make, modify or discharge any contract of insurance, (b) to bind the Company by making any promise respecting any benefits under any policy issued hereunder.

3. That no statement made by or by, and no knowledge on the part of, any Agent, medical examiner or any other person as to any facts pertaining to the Applicant shall be considered as having been made to or brought to the knowledge of the Company unless stated in either Part A or B of this application.

4. That the Company shall incur no liability under this application until it has been received, approved, and a policy issued and delivered, and the full first premium stipulated in the policy has actually been paid to and accepted by the Company during the lifetime of the Applicant, in which case such policy shall be deemed to have taken effect as of the date of issue as recited on the first page thereof.

5. In case of apparent errors or omissions discovered by the Company in Part A of this application, the Company is hereby authorized to amend this application by noting the change in the space entitled "Corrections and Amendments," and I hereby agree that my acceptance of such policy, accompanied by a copy of the application so amended, shall operate as a ratification of such changes or amendments, provided, however, that no change shall be made as to amount, classification, plan of insurance or benefits unless agreed to in writing by me.

Signed by Applicant and dated at Bristol Tenn. this 30 day of Aug 1927

Witness to signature: A Slater — Signature of Applicant: Percy Edward Legg

Part B — Continuation of the Application. Applicant's Statements to the Medical Examiner. The answers below are for the Applicant's answers only. Signing but his answers should be inserted. Statements of or comments by Medical Examiner must be recorded in Part C.

1. What is your occupation? If not duties: Plumbing & Heating Co. Inside
2. Have you ever undergone a medical examination for insurance and failed to receive the exact amount or kind of policy applied for? If yes, give particulars and name of Company: No
3. Have you during the past year resided or been intimately associated with any person suffering from tuberculosis? If so, give particulars and precautions taken: No
4. Has any one of your parents, brothers or sisters ever had, tuberculosis, cancer, diabetes, epilepsy, insanity or any hereditary disease? If yes, give particulars: No
5. Have you ever been an inmate of, or have you ever received treatment at an asylum, hospital, sanatorium or rest? If yes, give date, duration, name of address and name of institution: No
6. Have you ever changed residence or traveled for your health? If yes, why and when? No
7. Have you ever received or applied for a pension or disability or compensation benefits from any government or from any municipal or private corporation or have you ever received or applied for any benefit under a policy of accident or health, workmen's compensation or fraternal insurance? If yes, state reasons in full: No
8. Have you ever taken narcotic treatment? If yes, state dates and for how long: No
9. Have you ever used opium, chloral, cocaine, or other narcotics? No
10. (a) To what extent do you use beer, wine, or other alcoholic beverages? (a) Drink 2 drinks - 2 times a week
(b) Have you ever used any of them to excess? If so, when and for how long? (b) No

11. Have you ever suffered from any ailment or disease of

	Yes or No	Name of such Ailment, Disease or Injury	No. of Attacks	Date	Duration	Results	Name and address of every Physician consulted
(a) The Brain or Nervous system?	No						
(b) The Heart or Lungs?	No						
The Stomach or Intestines, Liver, Kidneys or Genito-Urinary Organs?	No						
(d) The Skin, Bones, Glands, Ears or Eyes?	No						
(e) Have you ever had Rheumatism, Gout or Syphilis?	No						
(f) Have you ever had Paralysis or Insanity?	No						
(g) Have you ever had Diabetes, Pleurisy or Pneumonia?	Yes	Pneumonia	1918	Yes	Severe	Dr. L. E. Tunge Bristol, Va.	
(h) Have you ever vomited or spat blood? If so, give full details.	No						
(i) Have you ever had any Accident, Injury or Occupational Disease?	No						
(j) Have you ever had any Surgical Operation?	No						
(k) Have you consulted a physician for any ailment or disease not included in your above answers?	No						

12. What physician or physicians, if any, not named above, have you consulted or been treated by, within the last five years and for what illness or ailment? If none, so state.

Name and Address of Physician	Date and Details of Illness	Results
Dr. J. Thomas Bristol Va.	Pneumonia	Good

13. Family Record

	Living: Residence of Parents if dead give date	Dead: Age	Dead: Cause of Death	Dead: How Long Ill	Dead: Year of Death	Ages Attained by Grandparents: Relationship	Ages
62	Living					Father's Father	78
61	Living					Father's Mother	Living
58	Living					Mother's Father	76
						Mother's Mother	76
41	Living						

Father: No. Living 1, No. dead 0
Mother: No. Living 1, No. dead 0
Brothers: No. Living 2, No. dead 0
Sisters: No. Living 1, No. dead 0

I HEREBY CERTIFY that I have read the answers to the questions in Part A hereof and to the questions in Part B hereof and to the questions correctly written, as given by me, and that they are full, true and complete, and that there are no exceptions by any [illegible] Examiner than as stated herein.

Dated at Bristol Va. this 30 day of Aug 1927

Witness to Signature: [illegible] — Signature of Applicant: Percy Edward Legg

M. D.

NOV 1 1929

District BRISTOL, TENN.

Number 5081405 A.

METROPOLITAN LIFE INSURANCE COMPANY

1 Madison Avenue, New York, N. Y.

Income Policy
Whole Life

Insuring the Life of

GEORGE E. LEGG

for

Immediate Payment at death

of $ 100

and 239 further

M'THLY Income Payments

of $ 100 each

Annual Premium of $ 425.83

Payable During Life

Annual Distribution of Divisible Surplus

Premiums for Supplementary Contracts

Disability Provision $ 49.39 ANN.

Accidental Death Provision $ _____

Receipt of $ 475.22, the first premium hereunder, is hereby acknowledged.

Countersigned

Sept 30 1927

Janet Richards
Secretary

SIGNATURE C. D. Smith

This Policy shall not take effect unless or until the first premium therefor, as entered on the foregoing receipt, has actually been paid in cash.

817 Ord. 1-25
PRINTED IN U.S.A.

SEPT. 28. 27

NOTICE TO POLICY-HOLDER

ASE READ YOUR POLICY PROMPTLY UPON ITS RECEIPT

...s Home Office when you change your address.

...ation write to or apply to the Company's
the Home Office give your Policy Number and state clearly Name, Residence, County and State.

THE COMPANY'S AGENTS
have no authority to waive forfeitures, to alter or amend this Policy, to accept premiums in arrears or to extend the due date of any premium.

Checks, Drafts or Money Orders
in payment of premiums should be drawn to the order of Metropolitan Life Insurance Company.

Privilege of voting for Directors.
The election of Directors of the Company is to be held in New York on the second Tuesday in April, 1927, and every second year thereafter. The holder of this Policy, after one year from its date, while it remains in force, will have a right to vote either in person or by proxy or by mail. For particulars as to how to vote, apply to the Secretary, No. 1 Madison Avenue, New York City.

In the event of the death of the Insured,
the Claimant should promptly advise the Home Office, in New York, or the District Office through which premium payments have been made. Pay nothing to any representative of the Company for preparation of claim papers. Deliver the Policy only to the Company's representative. The Company is glad to pay and there is no necessity for help or alleged influence in collecting.

It is not necessary to employ an attorney or any other person to collect the insurance under this Policy, or to secure any of the benefits it provides.

Premium Payments are invalid
unless made in exchange for an official Home Office receipt signed by the President, Vice-President, Actuary, Treasurer or Secretary of the Company and properly countersigned.

In compliance with the written request of the insured, it is hereby declared that if any of the children of the insured, John Paul Legg, George E. Legg, Mildred I. Legg, and Mary E. Legg, the beneficiaries of record, shall survive the insured and die before all of the income payments shall have been made, the remaining payments shall be made, as they fall due, to the survivors of the said children of the insured, in equal shares, or solely to the last survivor. In the event that any of the said children of the insured shall survive the insured and the last survivor of the said children of the insured shall die before all of the income payments shall have been made, the remaining payments shall be commuted at the rate of three and one-half per centum per annum, compound interest, and paid at once in one sum to the executors or administrators of such last surviving child of the insured.

Dated at New York, this 8th day of May 1931.
ER

MAY 8 1931 JOHN PAUL, GEORGE E, MILDRED I & MARY E LEGG
CHILDREN OF THE INSURED, IN EQUAL SHARES, OR TO
THE SURVIVORS IN EQUAL SHARES, OR TO THE SURVIVOR. RESERVED
NOTE - No change of beneficiary ... unless endorsed on this Policy by the Company at the Home Office.

[fol. 9] IN UNITED STATES DISTRICT COURT

REFEREE'S OPINION AND ORDER—Filed and Entered April 27, 1934

This matter is before the Referee upon the report of the Trustee herein, filed April 10, 1934, and the exceptions of the bankrupt to said report, filed April 10, 1934, and April 16, 1934.

The Trustee reported that on the 28th day of September, 1927, the Metropolitan Life Insurance Company issued a life insurance policy on the life of the bankrupt, #5081405-A, and upon the same day issued a supplementary contract to said policy as to the payment of disability benefits to the insured with waiver of premiums if the insured should become totally and permanently disabled in accordance with and under the terms of the provisions in said supplementary contract. A photostatic copy of said insurance policy and supplementary disability contract was filed and made a part of the record in this case without the objection that there was better evidence of said contracts.

The Trustee further reports that beginning with June 18, 1930, the bankrupt has been receiving disability benefits from said insurance company under said disability contract at the rate of $174.52 per month on the 18th of each month, and that the last payment received by him was February 18, 1934; that said payments are made in advance and, therefore, there were no disability benefits due the bankrupt on March 8, 1934, the date of his adjudication in bankruptcy; that between February 28, 1934, and March 8, 1934, said insurance company was enjoined from paying further benefits to the insured under this contract by a creditor.

The Trustee further reports that he has set apart said life insurance policy and any cash surrender value thereunder to the bankrupt as exempt under the law, but he reports the disability benefits under said supplemental con-
[fol. 10] tract are not exempt, but assets of this estate. To so much of said report as declares the disability benefits under said contract to be assets of the estate and not exempt, the bankrupt, through his attorney, has filed objections and insists that said disability benefits are proceeds of said life insurance policy and should be set apart to the bankrupt as exempt property.

A hearing of these objections was had at Kingsport, Tennessee, on April 10, 1934, by consent of parties. Judge Robt. Burrow and Clayton Scyphers, appearing for creditors in support of the Trustee's report and Henry Roberts appearing for the bankrupt. After hearing the argument of counsel, the Referee took the matter under advisement. Later briefs were filed by counsel interested, and after due consideration of the issue, the Referee is of the opinion and finds:

(a) That the said life insurance policy and the said supplementary contract as to disability benefits are two wholly separate contracts, one a life insurance and the other a contract of indemnity against total and permanent physical disability. This question has been passed upon in the case of Chattanooga Sewer Pipe Works vs. Dumler, reported in 62 A. L. R. 999, at page 1003. The Referee is of the opinion the reasoning in said case is sound and is applicable in this case.

(b) That the statutes of Tennessee exempting proceeds of a life insurance policy have no application to disability benefits under a contract of indemnity against total and permanent physical disability as in the instant case. Counsel do not cite, and the Referee has not found any case in Tennessee passing directly upon this question; however, the Court of Appeals in the case of Cravena vs. Robbins, Tennessee Appeals Reports, Vol. 8, page 435, has held that [fol. 11] the statutes of Tennessee exempting life insurance have no application to indemnity for disability under a policy of health insurance. This is analogous. It is further held in that case that since under the common law there were no exceptions, only those items specified by the statute can be held to be exempt.

(c) That the disability benefits payable to the bankrupt under the terms of his said contract of indemnity against permanent and total disability were a vested property right at the date of adjudication in this case and passed to the Trustee in Bankruptcy. So far as the Referee has been able to find this exact question has not been passed upon.

The Referee is of the opinion that these disability benefits are not in the nature of earnings. These have been purchased and paid for and the right to receive them, although contingent, is vested,

As stated, this contract for disability benefits is not a life insurance policy, and the provisions of law peculiar to life insurance do not govern.

It is a principal of law that property rights of the bankrupt, though contingent, pass to the Trustee in Bankruptcy if vested in the bankrupt at the time of his adjudication, as in the case of remainder and contingent interests in real estate.

In the case of Mutual Life Insurance Company of New York vs. Jeremiah Smith, Jr., Trustee, etc., 33 L. R. A. (N. S.) 439, at page 442, it was held that the right of the bankrupt to receive $1,000.00 per year under an annuity contract so long as he might live, beginning when he should reach a certain age, provided he was then alive, was like the right of a bankrupt in and to remainder and contingent interest in real estate, and a right that the Trustee in Bankruptcy might seize and hold for the benefit of creditors. [fol. 12] In the case of Suskin & Berry, Inc., vs. James Rumley, Trustee, etc., 68 A. L. R. 768, at page 772, is a discussion of the right of a Trustee in Bankruptcy to take contingent remainders, and the rule is announced that where the contingency relates to the person or persons who are to take, a contingent remainder does not pass to the Trustee, but where the contingency relates to the event, and not to the person who takes, the remainderman possesses a vested right, which would pass to a Trustee in Bankruptcy. In the instant case there is no contingency as to who will take the disability benefits. The only contingencies are: Will the bankrupt continue to be permanently and totally disabled and will he continue to live?

Therefore, as stated, the Referee is of the opinion that the right to receive said disability benefits was a vested right at the time of adjudication in this case and passed to the Trustee herein.

(d) It is conceded by the Trustee and creditors represented at this hearing that the bankrupt is entitled to $40.00 per month of said disability benefits as exempt income under the Tennessee statutes, and it therefore follows that the Trustee herein is entitled to receive from Metropolitan Life Insurance Company, the sum of $134.52, per month, beginning with March 18, 1934, and the bankrupt is entitled to receive $40.00 per month, beginning March 18, 1934, until such sum is realized by the Trustee as will be sufficient to

satisfy the claims filed and allowed in this case, and the costs of administration, or until said bankrupt is no longer entitled to receive benefits under said disability contract by reason of his recovery from said permanent and total disability, or by reason of his death.

[fol. 13] It is, accordingly, ordered, adjudged, and decreed:

That said objections to said Trustee's report be overruled, and the report of the Trustee as to this matter be approved.

It is further ordered, that the Metropolitan Life Insurance Company pay to Edmund St. John, the Trustee herein, the sum of $134.52 per month, as an asset of this estate, beginning with March 18, 1934, and the sum of $40.00 per month to George Everett Legg, the bankrupt herein, beginning March 18, 1934, until the claims filed and allowed in this case and the costs of administration have been satisfied or the recovery of the bankrupt from his said permanent and total disability, or until the death of the bankrupt, whichever contingency may first occur.

It is further ordered that service of this order be had by mailing a signed copy of same to Metropolitan Life Insurance Company, One Madison Avenue, New York City, and to the bankrupt, George Everett Legg, Bristol, Tennessee, and to Edmund St. John, the Trustee herein, Bristol, Tennessee, and such service when made shall be sufficient.

It is further ordered that any party feeling aggrieved by the action of the Referee herein shall have twenty days from this date within which to file with the Referee a petition for review of his action by the U. S. District Judge.

Dated at Greenville, Tenn., April 27, 1934.

H. C. Haynes, Referee in Bankruptcy.

[fol. 14] IN UNITED STATES DISTRICT COURT

PETITION FOR REVIEW—Filed May 17, 1934

To the Honorable George C. Taylor, Judge of said Court:

Your petitioner, George Everett Legg, a resident and citizen of Bristol, Sullivan County, Tennessee, would show unto your Honor that he is much aggrieved by the opinion and order of Hon. H. C. Haynes, Refree in Bankruptcy,

of April 27, 1934, relative to life insurance policy No. 5081405-A, and the total and permanent disability supplementary contract attached thereto and made a part thereof, on the life of petitioner George E. Legg, issued by the Metropolitan Life Insurance Company, under date of September 28, 1927, in which opinion and order it was held that the total and permanent disability payments due and payable under said policy and supplementary contract were not exempt from the claims of petitioner's creditors under the statute laws of the State of Tennessee, and directed that such payments be made to the Trustee in Bankruptcy.

Petitioner respectfully claims that said life insurance policy and supplementary contract, and all benefits payable thereunder, are exempt under the provisions of Chapter 113, Public Acts, 1925, of the Legislature of Tennessee, now section 8458 of the Code of Tennessee; and if he be mistaken relative thereto, then, in that event, he invokes the provisions of United States Code annotated, Title 11, Section 110 (a) (5): and in any event the title to said insurance policy and supplementary contract, and to all parts thereof, remains in your petitioner, and does not vest in the Trustee.

Petitioner here refers to his exceptions to the Trustee's report, filed April 16, 1934, and to the photostat copy of said insurance policy and supplementary contract, and [fol. 15] makes them a part hereof.

Petition more particularly refers to the errors complained of as follows:

1. It is thought that said opinion and order are in direct conflict with the provisions of said policy and supplementary contract.

2. By the terms of the policy and the supplementary contract, they are one contract, and cannot be separated into two contracts as held in the opinion and order.

3. The setting aside of the policy as exempt, and the vesting of the title thereto in petitioner carried with it the title to and the right to receive the disability payments under the policy and supplementary contract.

4. In any event, the policy and the supplementary contract are an "annuity contract", and the payments thereunder are exempt as such under said section 8458 of the Tennessee Code.

5. Section 110 (a) (5), Title 11, U. S. C. A., is broader than the Tennessee exemption statute, and refers to "any insurance policy", rather than "any life insurance policy", and in any event petitioner has a right to comply with the terms of said section and continue to hold, own and carry said policy and supplementary contract, and receive all the benefits thereof, free from the claims of creditors.

6. The title to said insurance policy and supplementary contract, remains in the petitioner and does not vest in the Trustee, and the Trustee has no right to collect the payments thereunder.

Your petitioner, therefore, prays that the said opinion and order of the Referee be reviewed, and that an order be entered in your Honor's Court setting aside said policy [fol. 16] and supplementary contract, and all payments thereunder, to your petitioner, as exempt, in accordance with law.

This May 16th, 1934.

Respectfully submitted, George Everett Legg, by Henry Roberts, Caldwell, Brown & O'Dell, Solicitors.

[fol. 17] IN UNITED STATES DISTRICT COURT

MEMORANDUM OF DISTRICT JUDGE—Filed August 10, 1934

This is before me on the referee's certificate to review his order, dated at Greenville, Tennessee, April 27, 1934. The question presented is the status of total and permanent disability benefits accruing out of a contract annexed to a life insurance policy under Tennessee statutes, where the condition maturing the contract existed at the time of bankruptcy.

The referee, in a learned opinion, has reviewed the authorities cited and relied upon by counsel, and has reached the conclusion that the policy of life insurance and the contract relating to disability benefits are wholly separate, citing as authority the case of Chattanooga Sewer Pipe Works v. Dumler, reported in 62 A.L.R. 999, and he refers particularly to the language employed in that decision at page 1003. The Mississippi Supreme Court was distinguishing between the cash surrender value of life insurance

policies, as proceeds, exempt under a similar Mississippi statute, and the benefits accruing under the provisions in a life insurance policy relating to indemnity in the event of total and permanent disability. The language referred to by the referee is: "In the case at bar, the money involved is in no sense the proceeds of a life insurance policy. It is true that it arises out of one of the provisions of the policy of insurance on the life of the appellee, but this provision is a contract of indemnity wholly separate from a contract to pay a fixed sum upon the death of the insured." This case is also reported in 120 Southern 450. See also Tennessee Appeals Reports, Vol. 8, p. 435, for a discussion of the analogous proposition that the exemption statute affecting life insurance policy *proceeds* has no application to disability benefits accruing under a policy of health insurance.

[fol. 18] The bankrupt's chief insistence that the referee's action was incorrect lies in his urging that the contract providing for total disability benefits and the contract providing for payment in event of insured's death are so connected and related to each other, particularly upon the fact that the contract for indemnity permits the insurer to collect out of the disability benefits certain percentages to be applied upon any loans obtained by the insured under the provisions of the life insurance contract, that they must be treated as parts of the same contract. It does not follow that the contracts are inseparable or parts of each other because benefits accruing under one may be applied by the insurer to the discharging of liabilities incurred by borrowing money, a right accruing to the insured under the provision of the other. This situation may render the matter of administration more complicated and difficult, but it is my opinion that it does not affect the question whether the contracts are to be regarded as one or two contracts. That the contract for disability benefits would not and could not have been entered into by the bankrupt with the insurer but for the existence of the life insurance contract does not prove the case. The life insurance contract could certainly stand alone, and every contract in a certain sense, is dependent upon antecedent transactions.

It is urged in behalf of the bankrupt that the policy of the courts and of the legislature is to liberalize the application of exemption statutes in Tennessee in order that the

underlying purpose of the sovereign to leave exempt in the hands of its citizens a sufficient amount of property to prevent the citizen becoming a public charge may be accomplished. The statute under consideration, however, is a statute in derogation of the common law, and must be given [fol. 19] a reasonable strict construction. The argument made by the bankrupt in this respect is rather an argument that a logical program of legislation would result in the enactment of a statute exempting the proceeds of disability indemnity contracts, as well as the proceeds of life insurance contracts. The fact that the courts have held the cash surrender value of life insurance contracts proceeds thereof, constitutes no precedent for holding that proceeds of disability or health and indemnity contracts are proceeds of life insurance contracts. Cravens v. Bobbins, 8 Tenn. App. Rep. 435.

No Tennessee decision has been cited giving the statute involved any different construction than that given it by the referee, and an application of the general law of construction of exemption statutes, in derogation of the common law, was correctly made.

The contingencies involved in this case are not such contingencies as operate to defeat the trustee's possession of such property rights as exists. Whether its value may be changed by the happening of events or otherwise, it is a vested property right of the bankrupt, and as such passed to the trustee. The right and its value was vested upon the happening of total and permanent disability. The extent or value of the right alone, not the ownership, may be affected by the happening of a contingency.

The other objections made to the referee's order have been considered, but it seems they only affect the question of the application of the principle involved, rather than the correctness of the principle announced. That the referee's conclution may complicate the administration of the estate furnished no justification or right to apply an incorrect principle of construction even if by so doing it would render more simple the administration.

[fol. 20] It follows the referee's order will be in all things confirmed.

George C. Taylor, Judge.

[fol. 21] IN UNITED STATES DISTRICT COURT

ORDER AFFIRMING REFEREE'S ORDER—Entered Sept. 5, 1934

This cause having been heretofore submitted to the Judge of this Court upon the petition of George Everett Legg to review the opinion and order of the Referee herein of April 27, 1934, upon the briefs and oral argument of respective counsel, and the Court having filed a Memorandum Opinion herein on August 10, 1934, which is made a part hereof, it is hereby ordered that the order of the Referee entered herein on April 27, 1934, be and the same is hereby affirmd.

Approved for entry.

George C. Taylor, District Judge.

[fol. 22] IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed Sept. 5, 1934

Now comes George Everett Legg, bankrupt in the above styled case, and in connection with his petition for an appeal assigns the following errors which he avers occurred on the trial thereof and upon which he relies to reverse the judgment entered herein as appears of record.

[fol. 23] Petitioner George Everett Legg complains of the following errors in the opinion and judgment of the District Court:

1. It is thought that the opinion and order are in direct conflict with the provisions and obligations of the policy of life insurance and suppplementary contract.

2. The life insurance policy and supplementary contract, and the cash surrender value thereof, including the disability benefits, are exempt under Section 8456 and Section 8458 of the Tennessee Code; and the setting aside of the life insurance policy and the cash surrender value thereof as exempt, and the vesting of the title thereto in the bankrupt by the Court, carried with it the title to and the right to receive the disability benefits under the life insurance policy and supplementary contract, including the disability payments in controversy.

3. The proposition set out in Assignment No. 2 is true, under the provision of Section 8458 of the Tennessee Code referring to "the net amount payable under any policy of life insurance," as well as under the provision of said Section "or under any annuity contract".

4. Section 110 (a) (5) Title 11, U. S. C. A., is broader than the Tennessee Exemption Statute and refers to "any insurance policy," rather than "any *life* insurance policy," and in any event petitioner has a right to comply with the [fol. 24] terms of said section and continue to hold, own and carry said policy and supplementary contract, and receive all the benefits thereof, free from the claims of creditors.

5. The title to said life insurance policy and supplementary contract, remains in the bankrupt under the State statutes and Bankruptcy Act and does not vest in the trustee, and the trustee has no right to collect the disability payments thereunder.

For which errors George Everett Legg, appellant in the appeal prayed for, prays that the said judgment of the United States District Court for the Northeastern Division of the Eastern District of Tennessee, dated August 10, 1934, in the above entitled cause, be reversed, set aside and annulled, and for general relief.

George Everett Legg, by Henry Roberts, Caldwell, Brown & O'Dell, Attorneys for Appellant.

Copy of above Assignment of Errors received this September 5, 1934.

Clayton Scyphers, Robert Burrow, Counsel for Edmund St. John, Trustee, and Creditors.

[fol. 25] IN UNITED STATES DISTRICT COURT

ORDER APPROVING RECORD—Entered Sept. 5, 1934

It is ordered that the narration of the testimony of George E. Legg stipulated in the stipulation of counsel for record on appeal be and the same is hereby approved; and that the papers referred to in said stipulation for record on appeal be and they are approved as and for the record in this case on appeal; and that the photostat copy of the insurance policy filed in the record be mailed by the Clerk of this Court, with the record, to the Clerk of the United

States Circuit Court of Appeals for the Sixth Circuit, to be considered as a part of the record on appeal.

It is further certified that in the opinion of this Court the appeal in this case, *in forma pauperis*, is taken in good faith.

Geo. C. Taylor, District Judge.

[fol. 26] IN UNITED STATES DISTRICT COURT

STIPULATION FOR RECORD ON APPEAL—Filed September 5, 1934

It is hereby stipulated and agreed between counsel for the respective parties in the above entitled cause, that the record on appeal shall consist of the following:

1. Petition for adjudication and order thereon.
2. Narration of testimony of George Everett Legg before Referee April 10, 1934, as follows:

I live in Bristol, Sullivan County, Tennessee; have lived there the greater part of the six months next preceding the filing of my bankruptcy petition. I am married, have four children aged twelve, fourteen, eighteen and twenty-three, all living at home and being supported by me. I have a policy of life insurance with the Metropolitan Life Insurance Company, the face value of which is $17,452.00, the policy providing for disability payments, and the disability payments have been made since June 18, 1930, in the amount of $174.52 per month. Some of this money is attached in the Chancery Court at Bristol. The policy waives premium for disability, and provides that premiums are paid as long as I am disabled. I got up these schedules. This is the insurance policy to which I refer No. 5081405-A, issued by Metropolitan Life Insurance Company September 28, 1927. I introduce the policy with the right to substitute a copy of it which we will have to get from the company.

Referee: Very well. This is a matter that should come up on the filing of the Trustee's report. The loan on the policy is fourteen hundred and something as of December 28, 1933. The cash surrender value at the end of six years is $1,585.00. The disability payments are payable so long as I am disabled and the company reserves the right to

[fol. 27] check up on the disabilities. Mr. Keller attached the disability benefit payments in the Chancery Court at Bristol recently and I then filed my petition in bankruptcy.

3. Section 3 of Trustee's report as amended.
4. Amended exceptions to Trustees report filed April 16, 1934.
5. Referee's Opinion and Order of April 27, 1934.
6. Petition for Review.
7. Opinion of District Judge.
8. Assignment of Errors.
9. All orders entered by District Judge.
10. The photostat copy of policy to be sent up without copying.
11. This stipulation.
12. All data and papers required by Rules of Court.

Henry Roberts, Caldwell, Brown & O'Dell, Counsel for George E. Legg. Clayton Scyphers, Robert Burrow, by C. S., Counsel for Edmund St. John, Trustee, and Creditors.

[fols. 28 & 29] Clerk's certificates to foregoing transcript omitted in printing.

[fol. 30] IN UNITED STATES CIRCUIT COURT OF APPEALS, SIXTH CIRCUIT

PETITION FOR APPEAL AND SUPERSEDEAS—Filed Sept. 11, 1934

May it please the Court:

And now comes George Everett Legg, bankrupt, by his attorneys, and feeling himself aggrieved by the final judgment of the United States District Court for the Northeastern Division of the Eastern District of Tennessee entered on September 5, 1934, hereby prays that an appeal may be allowed him from the said judgment to the United States Circuit Court of Appeals for the Sixth Circuit, in order that the errors complained of in the assignment of errors heretofore filed in the District Court as a part of this petition, may be reviewed, and if error be found, cor-

rected according to the laws and customs of the United States, and in order that this Court may superintend and revise in matter of law the said proceedings in the District Court.

A transcript of the record and proceedings in said cause in said District Court, certified under the hand and seal of the Clerk thereof in accordance with the rules of this Court, is presented herewith as a part hereof. [Tendered Sept. 8, 1934. J. W. Menzies, Clerk.]

The question for decision is: Are disability benefit payments for total and permanent disability payable under the provisions of a life insurance contract and supplementary contract attached to and made a part of the insurance policy exempt under sections 8456 and 8458 of the Tennessee Code of 1932. Section 8458 provides that "The net amount payable under any policy of life insurance or under any annuity contract" made for the benefit of or assigned to the wife and or children of the insured, shall be exempt from claims of his creditors.

[fol. 31] The District Court erred, it is believed, in holding that the disability benefit payments were not exempt.

If not exempt under the Tennessee statutes, then the policy of life insurance, and the cash surrender value thereof, being admittedly exempt under the Tennessee statutes, and the supplementary contract having no cash surrender value, the title to the policy and disability benefits remains in the bankrupt under the provisions of U. S. C. A., Title 11, Sec. 110 (a) (5).

The District Court did not affirmative- pass upon this question. It is believed that the Court erred in not holding that, under this section of the Bankruptcy Act, the policy and the disability benefit payments were the property of the bankrupt, and that the title thereto remained in the bankrupt and did not vest in the Trustee.

Even if the decision complained of on these two points is correct, it is believed the Court erred in not providing for the deduction of interest on the policy loan from the disability payments, and in not providing for the contingency that the disability payments are to be made to the beneficiaries in the event of the insured's "mental incapacity".

Petitioner further prays that an order of supersedeas may be entered herein pending the final disposition of the cause.

Henry Roberts, Caldwell, Brown & O'Dell, Counsel for George Everett Legg.

[fol. 32] *Duly sworn to by George E. Legg. Jurat omitted in printing.*

[fol. 33] IN UNITED STATES CIRCUIT COURT OF APPEALS

ASSIGNMENT OF ERRORS—Filed September 11, 1934

Petitioner George Everett Legg complains of the following errors in the opinion and judgment of the District Court.

1. It is thought that the opinion and order are in direct conflict with the provisions and obligations of the policy of life insurance and supplementary contract.

2. The life insurance policy and supplementary contract, and the cash surrender value thereof, including the disability benefits, are exempt under Section 8456 and Section 8458 of the Tennessee Code; and the setting aside of the life inusrance policy and the cash surrender value thereof as exempt, and the vesting of the title thereto in the bankrupt by the Court, carried with it the title to and the right to receive the disability benefits under the life insurance policy and supplementary contract, including the disability payments in controversy.

23. The proposition set out in Assignment No. 2 is true, under the provision of Section 8458 of the Tennessee Code referring to "the net amount payable under any policy of life insurance," as well as under the provision of said Section "or under any annuity contract."

4. Section 110 (a) Title 11, U. S. C. A., is broader than the Tennessee exemption statute and refers to "any insurance policy," rather than "any *life* insurance policy," and in any event petitioner has a right to comply with the terms of said section and continue to hold, own and carry said policy and supplementary contract, and receive all the benefits thereof, free from the claims of creditors.

5. The title to said life insurance policy and supplementary contract, remains in the bankruptcy under the State statutes and Bankruptcy Act, and does not vest in the trus-
[fol. 34] tee, and the trustee has no right to collect the disability payments thereunder.

For which errors George Everett Legg, appellant in the appeal prayed for, prays that the said judgment of the United States District Court for the Northeastern Division of the Eastern District of Tennessee, dated August 10, 1934, in the above entitled cause, be reversed, set aside and annulled, and for general relief.

George Everett Legg, by Henry Roberts, Caldwell, Brown & O'Dell, Attorneys for Appellant.

Copy of above Assignment of Errors received this September 5, 1934.

Clayton Scyphers, Robert Burrow, Counsel to Edmund St. John, Trustee, and Creditors.

[fol. 35] In United States Circuit Court of Appeals

Order Allowing Appeal—Entered Oct. 3, 1934

On petition of George Everett Legg, bankrupt, with accompanying assignments of error, it is ordered that an appeal be allowed as prayed in the petition, pursuant to the authority of Section 24-b of the Bankruptcy Act and to Rule 34 of this Court; and that citation issue returnable thirty days from this date.

Chas. H. Moorman.

[fol. 36] In United States Circuit Court of Appeals

Order Allowing Appellant to Proceed in Forma Pauperis —Entered Oct. 3, 1934

Appellant is hereby granted leave to proceed in forma pauperis, and it is ordered that the printing of record and briefs be dispensed with.

Chas. H. Moorman.

[fol. 37] IN UNITED STATES CIRCUIT COURT OF APPEALS, SIXTH CIRCUIT

(Before Hicks, Simons and Allen, JJ.)

ORDER OF SUBMISSION—Feb. 13, 1935

This cause is argued by Henry Roberts for appellant, and by Clayton Scyphers and Robert Burrow for appellee and is submitted to the Court.

IN UNITED STATES CIRCUIT COURT OF APPEALS

JUDGMENT—Filed April 15, 1935

Appeal from the District Court of the United States for the Eastern District of Tennessee

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Tennessee, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

[fol. 38] [File endorsement omitted]

IN UNITED STATES CIRCUIT COURT OF APPEALS, SIXTH CIRCUIT

No. 6906

In the Matter of George Everett Legg, Bankrupt

GEORGE EVERETT LEGG, Appellant,

v.

E. ST. JOHN, Trustee, Appellee

Appeal from the United States District Court for the Northeastern Division of the Eastern District of Tennessee

Before Hicks, Simons and Allen, Circuit Judges

OPINION—Filed April 15, 1935

ALLEN, Circuit Judge:

The District Court affirmed an order of the Referee in Bankruptcy directing a life insurance company to pay dis-

ability benefits accruing to the bankrupt after adjudication in bankruptcy, to the Trustee as assets of the bankrupt's estate. The bankrupt's life insurance policy and its cash surrender value, together with $40 of the monthly disability benefits, were held exempt. The sole question is whether the remainder of the monthly total and permanent disability payments, amounting to $134.52 per month, are exempt under Sections 8456 and 8458 of the Tennessee Code of 1932,[1] or under Title 11, U. S. C., Section 110 (a) (5).[2]

[fol. 39] Even were we to assume that Section 8456 applies notwithstanding the phrase "in the case of his death," the question presented under Sections 8456 and 8458 is the

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[1] Section 8456:

"Any life insurance effected by a husband on his own life shall, in case of his death, inure to the benefit of his widow and children; and the money thence arising shall be divided between them according to the statutes of distribution, without being in any manner subject to the debts of the husband."

Section 8458:

"The net amount payable under any policy of life insurance or under any annuity contract upon the life of any person made for the benefit of, or assigned to, the wife and/or children, or dependent relatives of such person, shall be exempt from all claims of the creditors of such person arising out of or based upon any obligation created after the effective date of this Code, whether or not the right to change the named beneficiary is reserved by or permitted to such person."

[2] Section 110 (a) (5), Title 11, U. S. C.:

"* * * When any bankrupt shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representative, he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings; otherwise the policy shall pass to the trustee as assets. * * *"

same. The disability payments are exempt only if they are made under a policy of life insurance or annuity. It is appellant's principal contention that they are made under a life insurance policy. The bankrupt was insured under such a policy. The disability contract, both by its terms and physically, is "attached to and made part of" the life insurance policy. Considered separately, the disability contract in no sense provides for life insurance. It is effective before death, upon a contingency, and is payable directly to the insured. However, appellant contends that as the contract is attached to and made part of the life insurance policy, it falls within the statutory exemption.

The disability contract contains the following provision:

"This Supplementary Contract shall be deemed to be a part of the above numbered Policy and the provisions of said Policy concerning declarations and representations by the insured, restrictions, payment of premiums, change of beneficiary, and assignment, are hereby referred to and by such reference made a part hereof. No other provisions of said Policy shall be held or deemed to be a part hereof. * * *"

Certain exceptions follow, which have no application here.

The disability contract, then, provides that the two contracts should be read together as to certain features, and should be separate as to other features. The payment of disability benefits does not fall within those provisions in which the two contracts are one. The premiums for the two forms of protection are entirely separate. In short, the disability contract is not a life insurance contract, nor is it by its own terms, except in limited particulars, a part thereof. Neither is it an annuity contract. An annuity [fol. 40] contract provides for payments to the insured or a named person or persons of a sum or sums periodically during life, or for a certain period. While this supplementary contract resembles an annuity in the fact that periodical payments to the insured are now being made thereunder, it does not fall within the definition of an annuity contract, and also it is not issued "upon the life" of the insured (Section 8458). Hence the Tennessee statutes have no application.

Neither does the contract fall within Section 110 (a) (5) of the Bankruptcy Act. That provision covers any in-

surance contract which has either an express cash surrender value or a cash surrender value under the concession or practice of the insurer. Hiscock, Trustee, v. Mertens, 205 U. S. 202. Nothing in the record indicates such a practice, nor any offer from the company to pay any amount upon the surrender of this disability contract.

We grant that Tennessee exemption statutes are to be construed liberally. Terry v. McDaniel, 103 Tenn. 415; Dawson, Trustee, v. National Life Ins. Co., 156 Tenn. 306. However, no construction is called for where the contract is clearly not within the terms of the statute.

Appellant urges that since the disability contract provides for waiver of premiums and also for the payment of disability benefits, the effect of the holding of the District Court is inconsistent in that it preserves for the insured his right to a waiver of premiums during disability while applying the disability benefits to the payment of his debts. This contention ignores the fact that each of these provisions is now being performed. The payment of premiums is waived, and the disability benefits are being paid.

The judgment of the District Court is affirmed.

[fol. 41] In United States Ciccuit Court of Appeals

Stipulation of Counsel for Transcript of Record—Filed April 30, 1935

It is hereby stipulated and agreed between counsel for the parties to the above entitled cause that the transcript of the record to be presented to the Supreme Court of the United States for a writ of certiorari shall contain the following:

1. The transcript of the record in the District Court.
2. Petition for appeal and supersedeas.
3. Assignment of Errors.
4. All orders entered in the cause.
5. Opinion of United States Circuit Court of Appeals.
6. All data and parts of the record required by the Rules of the United States Circuit Court of Appeals or the Supreme Court of the United States.

Henry Roberts, Caldwell, Brown & O'Dell, Attorneys for Appellant. Clayton Scyphers, Robert Burrow, Attorneys for Appellee.

[fol. 42] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 43] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 27, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: In forma pauperis. File No. 39,593. U. S. Circuit Court of Appeals, Sixth Circuit. Term No. 54. George Everett Legg, Petitioner, vs. E. St. John, Trustee. Petition for a writ of certiorari and exhibit thereto. Filed May 13, 1935. File No. 54, O. T., 1935.

FILE COPY

FILED
MAY 13 1935
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935.

No. 54

GEORGE EVERETT LEGG,

Petitioner,

vs.

E. ST. JOHN, TRUSTEE.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, SIXTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

HENRY ROBERTS,
J. K. BROWN,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935.

No. 54

GEORGE EVERETT LEGG,

Petitioner,

vs.

E. ST. JOHN, TRUSTEE.

PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

The petition of George Everett Legg respectfully shows to this Honorable Court:

A.

Summary Statement of the Matter Involved.

On September 28, 1927, Metropolitan Life Insurance Company issued its "Income Policy, Whole Life, insuring the life of George E. Legg", with a supplementary contract attached thereto, and made a part thereof, and expressly providing that it could have no separate existence from the

policy, and providing for two disability benefits in the event of total and permanent disability of the insured, viz: (1) Waiver of premiums on policy and supplementary contract, (2) payment to insured, or to beneficiaries if insured became mentally incompetent, of monthly benefit payments.

Beatrice A. Legg, wife of insured, was the beneficiary, but on May 8, 1931, the four children of the insured were made the beneficiaries, three of these children now being infants in school.

On June 18, 1930, Legg had a nervous breakdown and became permanently and totally disabled under the terms of the policy, and in due course the benefits under the policy and supplementary contract were allowed by the Company and the premiums have been waived and the monthly payments made ever since, beginning as of June 18, 1930.

In March, 1934, a creditor attached the benefit payments in the State Court, and Legg filed a petition and was adjudicated a bankrupt on March 8, 1934. No benefit payments were then due or payable, same having been paid in advance on February 18, 1934, to March 18, 1934. The loan on the policy was then $1,476.91. This insurance policy was the sole asset of the bankrupt.

Legg asserted before the Referee, the District Court and the Circuit Court of Appeals, that the title to the policy, including the supplementary contract, and monthly disability benefit payments, did not pass to the Trustee for the creditors, and that same were exempt under the Bankruptcy Act, Sec. 70a, and under sections 8456 and 8458 of the Tennessee Code of 1932.

It was admitted that $40 per month of the disability benefit payments were exempt under sec. 7711 of the Tennessee Code, and that the cash surrender value of the policy was exempt under the Tennessee Code, but the Court held that the balance of the monthly disability benefit payments

of $134.52 were not exempt either under the Bankruptcy Act or under the Tennessee Code, and directed same to be paid to the Trustee for the benefit of the creditors.

This conclusion was reached by holding that the contract had no cash surrender value, and therefore did not fall within Sec. 70a of the Bankruptcy Act; and that it was not a life insurance policy, nor an annuity contract, and therefore did not fall within Sec. 8458 of the Tennessee Code of 1932.

B.

Reasons Relied On for the Allowance of the Writ.

1. It is claimed that the Supplementary Contract, based on and made a part of the policy, and, by its terms, having no existence or effect separated from the policy, is, in the broad sense used by the Congress, an "insurance policy".

2. The Federal courts classify "Annuity" contracts as life insurance policies, and, in any event, this is an "Annuity Contract", and as such within the classification "insurance policy", as used by Congress.

3. There has been some controversy as to whether Annuity Contracts constitute life insurance, and it is believed that the Tennessee Legislature, by Section 8458 of the Code of 1932, exempted both "The net amount payable under any policy of life insurance or under any annuity contract" in order to avoid any question about the matter, as the cash surrender value of insurance policies had been held exempt under the old statute, Section 8456, and that this is both a policy of life insurance and an annuity contract within the meaning of the Tennessee Statute.

4. The Supplementary Contract expressly provides that the company may deduct the interest due on the policy loan from the disability payments, thus making the disability contract a part of the policy, and the decision complained of

therefore disregards this provision of the contract between the insured and the Company. It also disregards the contract provision that the benefits are payable to the beneficiaries under the policy in event of mental incapacity of insured.

5. It is believed that the decision of the Court in holding that Legg could hold benefit No. 1 (i. e., waiver of premiums) while directing that benefit No. 2 (i. e., monthly disability payments) be taken away from him for the benefit of his creditors is not supported by the facts; by logic, or by law.

These two benefits are twin children, and they cannot be separated by holding that one is a legitimate child and belongs to Legg, and the other illegitimate and belongs to Legg's creditors. The opinion of the Circuit Court of Appeals attempts to answer this point by saying, near the end of the opinion, "This contention ignores the fact that each of the provisions is now being performed. The payment of premiums is waived, and the disability benefits are being paid." So, too, is the order of a Court condemning a man to be executed for murder, based on evidence of mistaken identity, performed when the man is executed, but that performance does not make the order right. On the contrary, the fact that an innocent man has been executed, even by order of Court, produces a shock.

6. This Court, in several cases, and particularly in *Burlingham* v. *Crouse,* cited and discussed in the supporting brief, has recognized and approved a long line of decisions holding that life insurance policies having no cash surrender value do not pass to the Trustee in Bankruptcy. The Congress also recognized and approved this line of decisions when it added the proviso about insurance to Section 70a of the Bankruptcy Act and thereby legislated negatively in reference thereto, while at the same time legislating posi-

tively relative to "insurance policies" having a cash surrender value. This Court has construed Section 70a of the Bankruptcy Act several times to mean that the Congress intended to give the insured a benefit by that Act. It is submitted that the decision complained of is in conflict with these decisions.

7. Finally, it is respectfully submitted that this is an opportune time for the Supreme Court to set its seal of approval upon the efforts of individual citizens to provide for their families and themselves, in the event of their death or disability, by carrying their own insurance for such protection.

8. Counsel for Petitioner have been so concerned about this decision that the matter has been presented to Mr. Geo. B. Eager, Jr., Professor of Insurance and Bankruptcy Law at the University of Virginia, and a recognized authority on these subjects, and we conclude by quoting him:

> "It seems to me that the decision of the Circuit Court of Appeals for the Sixth Circuit in the case of Legg, Bankrupt, v. St. John, Trustee, is tragically wrong, both on principle and authority, in holding that the monthly payments to which a discharged bankrupt is entitled by reason of total disability, under an insurance policy which had no cash surrender value (if one accepts the court's view that the insurance against disability is severable from the life policy with which it was issued), belong to the trustee in bankruptcy.
>
> "It is common knowledge that many modern insurance policies, generically classed as 'life' policies, undertake to insure against other contingencies than that of death, and also to provide for installment instead of lump sum payments either in 'endowment' or 'non-endowment' policies. One of the most popular recent devices for selling 'life' policies has been the incorporation of clauses providing for the waiver of premiums and the payment of periodic benefits upon total

disability, and it seems to me socially unwise and legally unnecessary to hold that the presence of such a clause deprives the policy of its character as a 'life-policy,' within the meaning of that term as used in the exemption statutes. Though the disability contract, in the instant case, was called a 'Supplementary Contract', the evidences of intended integration are abundant.

"When the Tennessee legislature exempted 'the net amount payable under any policy of life insurance or under any annuity contract upon the life of any person, etc.', I think they meant to exempt the proceeds of any policy of the 'Quasi-investment' type, by which one attempts to build up, by present premiums, a future fund or income to which he and/or his dependents may look in case of old age, typified by the 'endowment' form, or death, or total disability, as contrasted with the pure 'indemnity' forms of insurance. Under the Tennessee statute, then, I think the Court should have held, as did the Pennsylvania Superior Court, under a similar statute, in *Baranovitch* v. *Horwatt* (July 13, 1934), 173 Atlantic 676, that 'the contract, in its broad terms, is a life insurance policy', and that the total disability benefits came within the exemption clause.

"Even if, however, one concedes the holding of the C. C A., that this so-called 'Whole Life' policy must be broken down into two contracts, and that the disability contract cannot be regarded either as a 'life' policy or as an 'annuity contract upon the life' of the bankrupt, it still seems to me that the segregated disability contract must be held to be an 'insurance policy' without any cash surrender value, within the meaning of Section 70a of the Bankruptcy Act. It is worthy of note that the Congress, in the insurance proviso, did not say 'life insurance policy' but only: 'When any bankrupt shall have any insurance policy which has a cash surrender value, etc.' Here, again, I think it a fair interpretation of the intention of Congress to say that it meant to save to the bankrupt,

upon payment to his trustee of the cash surrender value, if any, the benefit of 'any insurance policy' of the quasi-investment type by which one attempts to provide for his dependents, or himself, in the event of death, disability or old age. It is conceded that the disability insurance, in the instant case, as segregated from the life policy, had no cash surrender value, and it must be conceded that the Supreme Court of the United States has construed Section 70a of the Bankruptcy Act to mean that if, for any reason, an insurance policy has no cash surrender value, then it does not pass to the trustee in bankruptcy. The C. C. A. seems distinctly in error, then, in holding that Section 70a does not legislate, either positively or negatively, as to policies with no cash surrender value. Under the proviso, as construed, such policies simply remain the property of the bankrupt without the necessity of redemption."

WHEREFORE your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals, Sixth Circuit, commanding that court to certify and send to this Court for its review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 6906, in the matter of George Everett Legg, Bankrupt, George Everett Legg, Appellant, v. E. St. John, Trustee, Appellee, and that the judgment of the United States Circuit Court of Appeals, Sixth Circuit, may be reversed by this Honorable Court, and tnat your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

GEORGE EVERETT LEGG,
By HENRY ROBERTS,
J. K. BROWN,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935.

No. 54

GEORGE EVERETT LEGG,

Petitioner,

vs.

E. ST. JOHN, TRUSTEE.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The Opinions of the Courts Below.

This case was decided by the Circuit Court of Appeals, April 15th, 1935. The opinion is on page 22 of the Transcript of Record. Reported in 74 F. (2d) page —.

Opinion of District Judge, Record, page 12.

Opinion and Order of Referee, Record, page 7.

II.

Jurisdiction.

The jurisdiction of this Court is authorized and invoked under 28 U. S. C. A., section 347 (a) and under Rule 38, Section 5 (b), which provides:

> "Where a circuit court of appeals • • • has decided an important question of local law in a way prob-

ably in conflict with applicable local decisions; or has decided an important question of general law in a way probably untenable or in conflict with the weight of authority; or has decided an important question of Federal law which has not been, but should be, settled by this Court; or has decided a Federal question in a way probably in conflict with the decisions of this Court. * * *"

The question for decision is whether the title to monthly disability benefit payments, for total and permanent disability, under a contract supplementary to an insurance policy, and based thereon, pass to the Trustee in Bankruptcy of the insured Bankrupt, or are exempt under section 70a of the Bankruptcy Act, or under section 8458 of the Tennessee Code of 1932, and section 6 of the Bankruptcy Act; the Circuit Court of Appeals having held that the title passed, and that the benefit payments were not exempt under either the Bankruptcy Act or the Tennessee statute. These statutes are quoted hereinafter under Authorities and Argument.

III.

Statement of the Case.

The case has already been sufficiently stated under "Summary Statement of the Matter Involved" in the petition. A photostat copy of the insurance policy is exhibited with the record. For the convenience of the Court, the original policy accompanies the petition and brief with the request that it be returned when the Court disposes of the case.

Description of Policy.

Metropolitan Life Insurance Company, Income Policy, Whole life, insuring the life of George E. Legg, for immediate payment at death of $100 and 239 further monthly payments of $100 each. Annual Premium $425.83, payable dur-

ing life. Annual distribution of divisible surplus. Premiums for Supplementary Contracts: Disability provision $49.39 Ann. Accidental Death Provision $——. Receipt of $475.22, first premium, acknowledged Sept. 30, 1927. Policy dated Sept. 28, 1927. Amount of insurance or commuted value $17,452.00.

On first page, just before attesting clause: "The provisions and benefits printed or written by the Company on the following pages are a part of this Policy as fully as if recited over the signatures hereto affixed.

Cash surrender value at end of 6th year $1,585. The cash surrender value is payable to "the Owner hereof or the Assignee of record".

The policy was made payable to Beatrice A. Legg, wife of the insured, the right reserved to the insured to change the beneficiary. On May 8, 1931, the insured, in the manner provided, changed the beneficiary, and designated: John Paul, Goerge E., Mildred I. and Mary E. Legg, children of the insured, in equal shares, or to the survivors in equal shares, or to the Survivor, as Beneficiaries, reserving the right to change the Beneficiary.

Description of Supplementary Contract.

(Pasted Inside Policy on 2nd Page.)

"Total and Permanent Disability.

"Waiver of Premiums and Payment of Monthly Income.

"Supplementary Contract attached to and made a part of Life Insurance Policy No. 5081405-A issued on the life of George E. Legg,

Metropolitan Life Insurance Company

In consideration of the application for this Contract, as contained in the application for said Policy, the latter being

the basis for the issuance hereof, and in consideration of forty nine dollars and thirty nine cents, payable as an additional premium herefor, such payment being simultaneous with, and under the same conditions as, the regular premium under the said policy, except as hereinafter provided."

"Herewith agrees, that upon" due proof that the insured has, "*while said Policy and this Supplementary Contract are in full force,*" become totally and permanently disabled, and that such disability has continued uninterruptedly for at least three months, it will, "during the continuance of such disability"

> "1. Waive the payment of each premium falling due under said policy and this Supplementary Contract, and,
>
> "2. Pay to the insured, or a person designated by him for the purpose, or if such disability is due to, or is accompanied by, mental incapacity, to the beneficiary of record under said Policy a monthly income of $10 for each $1,000 of insurance, or of commuted value of instalments, if any, under said policy."

"The disability benefit herein provided shall not be payable if, at the date of disability, the said Policy shall be in force by virtue of any non-forfeiture provisions thereof."

"Insured to furnish proof of continued disability at any time demanded during first two years of disability, *and once each subsequent year.*

"The waiver of premiums and monthly income payments herein provided shall be in addition to all other benefits under said Policy," provided, however, that *interest on any indebtedness on the policy shall be deducted from monthly income payments,* if not otherwise paid. Monthly income payments shall not be subject to commutation.

"This Supplementary Contract shall automatically terminate and be of no further force or effect if any premium on said policy, or on this Supplementary Contract, shall remain unpaid at the end of grace allowed under said Policy for payment of premium thereunder *or if said Policy be surrendered* or converted under one of its non-forfeiture provisions or otherwise terminated."

"*This Supplementary Contract shall be deemed to be a part of the above number Policy* and the provisions of said Policy concerning declarations and representations by the insured, restrictions, payment of premiums, change of beneficiary, and assignment, are hereby referred to and by such reference made a part hereof."

"The provisions of said Policy as to reinstatement shall apply hereto, except that this Supplementary Contract shall not be reinstated unless said Policy is in force and no premium is in default thereof, or unless said Policy is reinstated at the time of reinstatement of this Supplementary Contract."

Dated Sept. 28, 1927.

The disability part of the Policy has no cash surrender value, and no value whatever except as a part of and based on the insurance policy.

Petitioner asserted before the Referee, District Judge and Circuit Court of Appeals, that the policy, its cash surrender value, and the supplementary contract, and the disability payments thereunder payable after adjudication, did not pass to the Trustee, and were exempt under Section 70a of the Bankruptcy Act, and Section 8458 of the Tennessee Code of 1932. The Court held that the disability benefits were not exempt, and directed that they be paid to the Trustee.

IV.

Specification of Errors.

The Circuit Court of Appeals erred in holding:

1. That the monthly disability benefit payments, under said supplementary contract, based on said insurance policy, payable after adjudication in bankruptcy, were not exempt under Section 70a of the Bankruptcy Act.

2. That said monthly disability benefit payments were not exempt under Sections 8456 and 8458 of the Tennessee Code of 1932.

3. That the title to said monthly disability benefit payments, payable after adjudication, passed to the Trustee, and in directing that same be paid to the Trustee in Bankruptcy.

V.

Summary of Argument.

The "Reasons Relied on for the Allowance of the Writ," set out in the foregoing petition, give a summary of the argument, and it seems superfluous to repeat them here.

We shall first discuss the terms and provisions of the policy, and supplementary contract, in the light of the common usage of the term life insurance, and then apply Section 70a of the Bankruptcy Act, and the pertinent decisions of this Court to the facts. We shall then undertake to show that the disability benefit payments are exempt under Section 8458 of the Tennessee Code both as "net amount payable under any policy of life insurance" and "or under any annuity contract", and therefore exempt under Section 6 of the Bankruptcy Act.

The discussion will be concluded under "The Title to the Policy and Supplementary Contract", which will summarize the entire argument.

VI.

AUTHORITIES AND ARGUMENT.

Point 1.

The Policy and Supplementary Contract.

The policy provides for Company loans on the policy to the insured. The Supplementary Contract provides that "interest on any indebtedness on the policy shall be deducted from the monthly income payments", if not otherwise paid. The decision disregards this contract provision.

The supplementary contract also provides that in the event of the "mental incapacity" of the insured, the monthly disability payments are to be made to the beneficiary of record, that is, the four children of Legg, thus further tieing the contract to the policy.

Neither the company nor the children are parties to the suit.

The quotations under Statement of the Case from the policy and Supplementary Contract show in express terms that the parties intended the insurance policy and Supplementary Contract providing for disability benefits to be one policy of life insurance.

The description of the policy earmarks it as "Income Policy, Whole Life", the "Whole Life" obviously referring to the disability benefits during life and during total and permanent disability, as well as to the payments to be made after the death of the insured.

The application shows that Legg was applying for what is commonly known as life insurance. In answer to Q. 15, Part A of the Application for Policy, the Applicant stated that the "Plan of insurance designated in the Rate Book" applied for was "Whole Life with Disability".

The "Total and Permanent Disability" part of the contract provides for:

1. Waiver of premiums on policy and contract.

2. Monthly disability payments to insured, or if he be mentally incapacitated, to beneficiaries under the policy.

Benefit No. 1 is worth about $475 per year. Benefit No. 2 is worth about $2,100 per year, less the $40 per month, or say $1,600 per year. Both benefits are provided by the Supplementary Contract, based on and made a part of the policy. They cannot be separated and Legg given the benefit of one and denied the benefit of the other. No. 1 is as much an asset of the estate as is No. 2. Benefit No. 1 keeps the policy and Supplementary Contract alive, while Benefit No. 2 was intended to keep the family alive during the disabled life of the insured. If the decision is right in giving benefit No. 2 to the creditors, then it is wrong in allowing Legg to hold title to Benefit No. 1, and Legg—totally disabled and bankrupt—should be required to pay to the Trustee the $475.22 per year, so long as he continues totally and permanently disabled, and bankrupt.

If this is the law of the land, not only Legg, but the millions of other citizens who are carrying similar insurance for the protection of themselves and their families have a right to know it. If it is not the law of the land, they should be encouraged by the decision of the Supreme Court to provide such protection.

The main consideration and condition upon which the disability payments are made after bankruptcy is the continued life of the policy and the disability of the bankrupt. The effect of the decision complained of is to treat this disability as an asset and purchase with it the disability benefits for the creditors, but it is not such a cash asset as the Bankruptcy Act contemplates shall pass to the Trustee. It

may be compared to the ordinary bankrupt's *ability* to earn a salary by performing services after bankruptcy; such salary is not an asset of the estate. The Act contemplates that the bankrupt shall give up all his cash assets to his creditors, and then begin life over with such ability as he may have. Surely the bankrupt with total and permanent disability will not be placed on a worse basis than one not disabled and whose ability to earn a living for his family is unimpaired.

It is asserted that when the title to the policy, and its cash surrender value, is held to continue in Legg, and to be exempt to him, such decision logically carries with it the right to "continue to hold, own and carry such policy free from the claims of the creditors" as stated in section 70a of the Bankruptcy Act. When Legg is given the title to the policy and the right to carry it or cash it in, he is given every right and privilege provided by the policy. He can surrender it for its cash surrender value, and cancel it, and the Court would be helpless to enforce its order, because the disability benefit payments are made only so long as the policy is in force.

The policy provides for monthly disability payments, in event of disability, before death, and for 240 monthly payments of $100 each after death of the insured. It is therefore obviously an Annuity Contract, and as such is within both the Federal and State classification of life insurance, as both classify annuity contracts as life insurance, and Tennessee goes further and provides that it is exempt if either a life insurance policy or an annuity contract. To the layman, and to the Legislature and Congress, it is protection for the insured and his family under the general classification of life insurance.

Point II.

Exempt under Section 70a of the Bankruptcy Act.

Section 70a of the Bankruptcy Act, now Section 110 (a) (5) U. S. C. A., provides:

"The Trustee of the estate of a bankrupt, upon his appointment and qualification, and his successor or successors, if he shall have one or more, upon his or their appointment and qualification, shall in turn be vested by operation of law with the title of the bankrupt, as of the date he was adjudged a bankrupt, except insofar as it is to property which is exempt, to all

(5) property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him. When any bankrupt shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives, he may, within thirty days after the cash surrender value has been ascertained and stated to the Trustee by the company issuing the same, pay or secure to the Trustee the sum so ascertained and stated, and continue to hold, own and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the Trustee as assets;"

It is believed that the interpretation of this section by the Supreme Court, and the principles enunciated in its decisions in the following cases are decisive of the instant case:

Burlingham v. *Crouse,* 228 U. S. 459, 57 L. Ed. 920, 924;

Hiscock v. *Mertens,* 205 U. S. 212, 51 L. Ed. 771;

Holden v. *Statton,* 198 U. S. 202, 49 L. Ed. 1018.

The above language in reference to insurance policies was first inserted in the Bankruptcy Act as a proviso. By a later amendment it was incorporated as a part of the body of the Act. It is important to note also that it refers to "any insurance policy," and not to "any life insurance policy". This omission was doubtless, among other reasons, to make the statute comprehensive, so as to embrace every type and character of insurance such as annuity, endowment, tontine, ordinary, disability and every other class of insurance policies.

It is important to observe that the insurance policy in question had a cash surrender value, but the supplementary contract, as such, had no cash surrender value.

The Referee held that the right to these monthly disability payments were vested when Legg was adjudicated a bankrupt, and that under the first three lines of subsection 5 quoted above, viz: "property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him", the title to the disability benefits passed to the trustee.

Legg claimed that the title did not pass, and that the benefits were exempt, because the supplementary contract was based on and made a part of the policy, which had a cash surrender value, and which cash surrender value was exempt under the Tennessee Statute, but that, if considered as a separate contract from the policy, it was necessarily based on same, and that if it had no cash surrender value, it was exempt for that reason, both under the Bankruptcy Act and the State Statutes. Also, that if it be assumed that it was vested right, then it was obviously an annuity, and as such exempt under both the Bankruptcy Act and the State Statutes.

Now then, in the three cases cited above, the Supreme Court had stated and repeated this (italics ours):

> "As Sec. 70a deals only with property which, *not being exempt, passes to the trustee,* the mission of the proviso was, in the interest of the perpetuation of policies of life insurance, to provide a rule which, where such policies passed to the Trustee *because they were not exempt,* if they had a surrender value their future operation could be preserved by vesting the bankrupt with the privilege of paying such cash surrender value, *whereby the policy would be withdrawn out of the category of an asset of the estate.*
>
> "This is to say, *the purpose of the proviso was to confer a benefit upon the insured bankrupt by limiting the character of the interest in a non-exempt life insurance policy which should pass to the trustee, and not to cause such a policy when exempt to become an asset of the estate.*"

In *Hiscock* v. *Mertens* the Court stated "it was an actual benefit for which the statute provided".

In *Burlingham* v. *Crouse,* the Court pointed out the fact that under the Bankruptcy Act of 1867, in which no special provision had been made for insurance policies, it had been held that insurance upon the life of the bankrupt vested in the bankrupt estate only to the extent of its cash surrender value at the time of filing the petition, hence when Congress enacted the Bankruptcy Act of 1898, it had this line of decisions in mind, and in order further to protect the bankrupt having insurance, inserted the proviso in Section 70a. So that both the Congress and the Supreme Court have recognized and approved the line of decisions holding that where the policy has no cash surrender value, the insured continues to hold it.

As stated by the Court in the last line above quoted, it was the purpose of Congress "not to cause such a policy when exempt to become an asset of the estate."

Therefore, whether considered as with or without a cash surrender value, the policy and the supplementary contract, or the supplementary contract based on and made a part of the policy, is an "insurance policy" in the sense intended by Congress, and is exempt in either event.

The cash surrender value being exempt under the Tennessee statute, in *Lockwood* v. *Exchange Bank,* 190 U. S. 294, 47 Law Ed. 1061, in considering what are now Sections 24 and 110 (a) of the Bankruptcy Law, the Court said: "The two provisions of the statute must be construed together and both given effect."

It is believed that the decision of this Court in the case of *Local Loan Co.* v. *Hunt* (decided April 30, 1934), 78 L. Ed. 1230, 93 A. L. R. 195, is applicable, particularly in that it emphasizes the point that the primary purpose of the act was to relieve the debtor "who surrenders for distribution the property which he owns *at the time of bankruptcy.*"

These disability benefits were not owned "at the time of bankruptcy", but are payable because of the *disability of the bankrupt after bankruptcy,* and because of the continued life of the insurance policy.

Point III.

Exempt as Life Insurance under Tennessee Statute.

A. History of Legislation and Decisions.

The old Statute passed in 1845-46, now section 8456 of the Tennessee Code of 1932, is as follows:

> "8456 4231 (2478). Insurance on Husband's Life, Effected by Himself, Goes to Wife and Children.—Any life insurance effected by a husband on his own life shall, in case of his death, inure to the benefit of his widow and children; and the money thence arising

shall be divided between them according to the statutes of distribution, without being in any manner subject to the debts of the husband. (1845-46, ch. 216, sec. 3.)"

The new Statute Section 8458 of the Tennessee Code of 1932, passed in 1925, follows:

> "8458. Life Insurance or Annuity for or Assigned the Wife or Children, or Dependent Relatives is Exempt from Claims of Creditors.—The net amount payable under any policy of life insurance or under any annuity contract upon the life of any person made for the benefit of, or assigned to, the wife and/or children, or dependent relatives of such person, shall be exempt from all claims of the creditors of such person arising out of or based upon any obligation created after the effective date of this Code, whether or not the right to change the named beneficiary is reserved by or permitted to such persons. (1925, ch. 113, modified.)

It is asserted that the disability benefit payments in controversy are a part of "the net amount payable under the policy of life insurance", and as such are exempt under the new Section 8458 of the Code.

It is submitted that the history of the legislation and decisions in Tennessee conclusively demonstrate this proposition.

It was held by the United States District Court for the Western District of Tennessee in *In re Stansell,* 8 F. (2d) 363, that the old Statute 8456, providing that "any life insurance effected by a husband on his own life shall, *in case of his death,* inure to the benefit of his widow and children," exempted the proceeds of a life insurance policy from the creditors of the insured both *before* and *after* the death of the insured. The Supreme Court of Tennessee in the case of *Dawson* v. *National Life,* 156 Tenn. 306, 300, S. W. 567, held that the old Section 8456 exempted a life insurance policy and the cash surrender value thereof from the claims

of creditors of the insured before the death of the insured. While the Act of 1925, now Section 8458, was then in effect, the Court did not know it had been passed as was pointed out in *Lunsford* v. *Nashville S. L. Corp.*, 162 Tenn. 179, 35 S. W. (2) 395.

The courts have thus held that the old section exempted life insurance policies and the cash surrender value thereof, *the cash surrender value being payable to the insured,* during the lifetime of the insured, *a fortiori* the disability benefit payments under the life insurance policy, which appear on the face of the policy to have been provided for the children beneficiaries, are exempt under the new Section 8458. The legislature clearly intended to broaden the exemption statute relative to life insurance, and the same rule of construction applied by the courts to the old Statute applied to the new Statute will exempt these disability benefit payments. The reason for holding that the disability benefit payments are exempt under the new Statute are stronger than the reasons for holding that the cash surrender value of life insurance policies are exempt under the old Statute. The policy in question contemplates that the insured, while totally and permanently disabled, may be physically able to receive the payments and apply them to the support of his children, yet it provides that if he becomes "mentally incapable", the payments are to be made direct to the children beneficiaries.

The only case that we have found which we believe bears directly on this question is *Pauline Baranovich* v. *Tony Horwatt, &c.,* decided by the Pennsylvania Superior Court, Western District, July 13, 1934. — Pa. Superior Ct. —, 173 Atlantic 676. In that case the question decided was "Are moneys due to the insured under a clause contained in a group life insurance policy providing for the payment of

the face amount of the policy to the insured in the event of permanent disability subject to attachment at the instance of the insured's creditors?"

The Court held that the permanent disability benefits were exempt. While the policy considered was a Group Life Insurance Policy that fact does not affect the question. The Statute applied referred to Group Life Insurance and exempted the same, did not in terms refer to disability payments under Group Life Insurance Policies, yet the Court held that such disability payments payable under a Group Life Insurance Policy were exempt. The legislature had later passed an act expressly exempting disability payments, but the rights of the parties were determined under the old act and exemption was sustained.

We wish to emphasize in the instant case the point made by the Court in the Pennsylvania case, that the policy containing the provision for disability benefit payments is, "*in its broad terms, a life insurance policy.*"

Suppose this had been a life insurance policy payable to Legg's estate, with provision for double indemnity in case of accidental death, and he had met accidental death? If the decision complained of is right, then the Court would *separate* the proceeds of the policy and give the accidental half to the Trustee for the creditors, and give the other half to the widow and children, and thus definitely overrule every case ever decided under the old statute. This policy form provided for Accidental death indemnity, but Legg did not take same.

In *Provident Life and Accident Insurance Company* v. *Rimmer,* 157 Tenn. 597, it was held:

> "The mere addition of the double indemnity clause providing for increased insurance upon proof of death by accident did not divest the policy of its character of

insurance on life, or make the contract other than life insurance."

Zimmer v. *Central Accident Ins. Co.*, 207 Pa. 472, 56 Atlantic 1003.

Logan v. *Fidelity, etc.*, 146 Mo. 115, 47 S. W. 948.

B. History of Disability Insurance and Ruling of Tennessee Commissioner of Insurance.

Disability provisions in life insurance policies originated as provisions to protect the insured from lapse of his policy in case he became totally disabled. The original provision being for waiver of premium only. Then the provisions were extended to provide partial advance payment or accelerated payment of the policy amount. (i. e. the Pennsylvania case, *supra.*) Later came the further extension for a periodical payment in addition to the waiver of premiums, without diminution of the policy amoumt.

Such provisions are *included in life insurance policies* under statutory authority of many states. In New York, for example, the specific statutory authority is found in Section 107 (k) (2) of the Insurance Law.

Tennessee, so far as we observe, has no similar statute. Tennessee has standard provisions for life insurance policies, and *Section* 6182 *of the Tennessee Code* of 1932 provides that no policy of life insurance shall be issued until the form of same has been filed with the Insurance Commissioner, and not afterwards if the form is disapproved by the Commissioner.

The form of the policy and supplementary contract involved in this litigation was filed with the Insurance Commissioner and was not disapproved. *Consequently the insurance Commissioner has deemed such supplementary contract to constitute a part of the life insurance policy.* Moreover, under date of October 1st, 1929, the Insurance Commissioner of Tennessee mailed to the insurance com-

panies doing business in the state a letter prescribing standard provisions for "total and permanent disability benefits, *in connection with life policies.*" A copy of this letter is incorporated herewith. This letter from the Commissioner of Insurance shows that he considered the provisions for total and permanent disability benefits in connection with life policies *a part of the life insurance policies.*

State of Tennessee

Department of Insurance and Banking

Division of Insurance

Nashville

A. S. Caldwell, Commissioner; T. E. Miles, Deputy Commissioner; J. H. Washburn, Actuary.

October 1, 1929.

To the Company addressed:

Re: Standard Provisions for Total and Permanent Disability Benefits in Connection With Life Policies

Dear Sirs:

At a recent meeting of the National Convention of Insurance Commissioners in Toronto on September 19, 1929, the joint report of the two special committees, dated April 23, 1929, on the above subject, was adopted practically unanimously, and I wish to state that my views are in accord with this action.

The standard provisions for total and permanent disability benefits in connection with life policies, as approved by the National Convention of Insurance Commissioners, are shown in the attached exhibits.

This is to advise that this Department's approval of all total and permanent disability provisions in connection

with life policies is hereby withdrawn as of March 31, 1930. Total and permanent disability provisions in connection with life policies will not be approved for use in this State on or after April 1, 1930, unless they comply in substance with the requirements set forth in the attached exhibit. Each company should put the standard disability provisions into effect at as much earlier a date as possible.

In adopting the joint report of the special committees, the National Convention of Insurance Commissioners also adopted the following resolution:

> "In Connection with the proposed standard provisions we believe that an adequate reserve basis graded according to the waiting period, should be made compulsory."

Having offered this amendment my views are, therefore, fully in accord with the statement by the Commissioners to the effect that an adequate reserve basis should be prescribed for total and permanent disability benefits.

Would thank you to kindly acknowledge receipt of this letter.

Yours very truly,

(Signed) A. S. CALDWELL,
Commissioner.

ASC:BH.

We find no authority in the Tennessee statutes for the prescription by the Insurance Commissioner of such standard provisions relating to disability, except the authority to approve or disapprove forms of *life insurance policies,* found in Section 6182 of the Code, hence, the letter incorporated herewith from the Insurance Commissioner was based upon his authority to approve or disapprove the forms of *life insurance policies, and he considered the disability provisions a part of life insurance policies.*

This Court held in *United States* v. *Hill,* 120 U. S. 169, 30 L. Ed. 627, at 632, that the principle that the construction given a statute by the executive and administrative officers is entitled to great weight.

The importance of considering the question from a broad standpoint is emphasized by the facts in the Pennsylvania case cited. In that case the policy provided that the Company might accelerate or anticipate the payment of the face of the policy in full settlement of both disability payments and the face of the policy.

Suppose that in the instant case the policy had provided that in the event of Legg's total and permanent disability, the Company might elect to pay the face of the policy in settlement of all obligations thereunder. The policy and money would clearly be exempt as life insurance under the Tennessee Statute.

POINT IV.

Exempt as an Annuity Contract under Tennessee Statute.

It is believed that the Supplementary Contract, based on and made a part of the policy, is an Annuity Contract, and that the disability benefit payments are exempt as such under Section 8458 of the Tennessee Code of 1932.

Referring to the Metropolitan rate book for 1930, Edition June, 1932, pages 20-21, under the title "Total and Permanent Disability Provision", the disability rider is set out and the basis on which this rider is issued in connection with life insurance policies designated, as "Ordinary", "Deferred Annuity", "Intermediate", "Ordinary and Intermediate", is explained. The classification of total and permanent disability payments as "Annuities" is shown by some of the statements which we quote:

> "*Deferred Annuities*—This disability benefit provides, in the case of male lives, that if *total and per-*

manent disability occurs before the beginning of deferred annuity payments, further premiums will be waived and the Company will pay a monthly income of $6.00 for each $10.00 of deferred annuity called for by the contract, such *disability annuity* being payable during disability up to the time the deferred annuity payments begin and no longer."

"*Intermediate*—The waiver of premium and monthly annuity provision may be issued with intermediate policies."

"*Ordinary and Intermediate*—* * * Limits for waiver of premium and monthly annuity provisions are:

"* * * In determining the total limit for the waiver of premium and monthly *annuity* provision as to any applicant,"

"* * * The premium for the waiver of premium and *Monthly annuity* benefit will be the same."

Then at the top of pages 313 to 413, describing more than one hundred policies issued, this statement appears repeatedly: "No disability annuity granted on $500.00 policies for male lives nor on policies under $2,000 for female lives."

At the top of pages 382 to 388 there appears a statement "No disability annuity granted with this policy."

These statements have reference to the general instructions referred to above on pages 20-21.

Coming now to the definition of annuities: Annuities guarantee a certain income payable monthly, quarterly, semi-annually, as long as the annuity contract provides.

"An annuity is the right of one person to receive a periodical sum of money from another by virtue of a voluntary obligation which that other has assumed."

Outlines for Review of the Fundamental Principal of Law, page 256, by William Lawrence Clark, published by the American Law Book Company, 1923.

Underwriters classify annuities as *single premium and annual premium.* Single premium annuities may be either immediate or deferred, while annual premium annuities are deferred.

In 3 C. J. p. 199, the definition and nature of annuities is given and their duration discussed.

We quote from page 200:

> "In its technical meaning, an annuity is defined as 'a stated sum, payable annually,' or as a yearly payment of a certain sum of money granted to another in fee, for life, or for years, and chargeable only on the person of the grantor.
>
> "The term is used in a broader sense as designating a fixed sum, granted or bequeathed payable periodically, but not necessarily annually subject to such specific limitations as to its duration as the grantor or donor may lawfully impose."

Relative to duration of annuities, we quote from page 205:

> "The duration of an annuity depends upon the construction of the instrument by which it is created. It may be perpetual, for life, or for a period of years, or subject to such specific limitations as to its duration as the grantor or donor may impose."

Citing:

Anderson v. *Hammond*, 2 Lea. (Tenn.) 281, 31 Am. Rep. 612.

Morgan v. *Pope*, 7 Cold. (Tenn.) 541.

From Page 206, Contingent Annuities:

> "The intention of the testator or donor, as expressed or clearly indicated, will often make the payment of an annuity dependent upon some event, or some act of the annuitant, and such intention will of course, govern, unless the restriction is contrary to law or public pol-

> icy. Similarly an annuity created on condition that it shall cease on the annuitant doing certain specified acts is forfeited by the doing of such acts. But the right to an annuity is not lost where the further performance of the condition by the annuitant becomes impossible."

Applying the foregoing to the contract and facts in the instant case, it is clear that the disability payments under the policy and supplementary contract is an annuity and that the contract is an "*annuity contract*", as described in the exemption statute.

It is to be noted that this entire policy is an *annuity policy* providing *monthly income payments* for twenty years after the death of the insured, as well as *monthly disability payments* during his continued disability during life.

Attention is called to the fact that the Metropolitan has been making these disability annuity payments since June 18, 1930; that the contract provides that the company may have Legg examined as often as desired during the first two years, and *thereafter only once a year*. The contract is designated as a "Total and permanent disability contract", and the provisions of the contract, as well as the requirements of the company, mean just what it says, viz.: That the insured must be totally and permanently disabled, as defined in the contract, before the company will begin to make the disability annuity payments. The payments are contingent upon the continued disability and the continued life of Legg, with the right to check up on the continuance of the disability once a year. Whether it be considered a contingent annuity, or an annuity for life, subject to the continued total and permanent disability of the annuitant, it is respectfully submitted that it is exempt under the Tennessee Statute.

Suppose this had been a deferred annuity policy, providing for the payment of monthly annuities beginning March 18, 1934, and continuing each month thereafter? In such

case, it is clear, under the above decision, that the cash surrender value of the policy being exempt, the bankrupt would be entitled to the payments. In the instant case, the adjudication was March 8, 1934, and the first payment was due March 18th. Is it not clear that the payments were exempt?

A study of the decisions indicates the reason the Legislature had for exempting "Annuity Contracts", as well as "Life Insurance Policies." There has been a division of opinion among the dicisions as to whether "Annuity Contracts" constitute "Life Insurance", hence the Legislature resolved the question by exempting both "Life Insurance Policies" and "Annuity Contracts."

In the case of *In re Horwitz,* 3 Fed. Sup. 16, "Annuity Contracts" were classed as life insurance, so were endowments.

Volume One of Couch on Insurance, Sec. 25, says:

> "The principal controversy over annuity insurance which is a contract to pay the insured or a named person or persons, a sum or sums periodically during life or for a certain period, has been whether such contracts constitute life insurance. If, however, in consideration of a series of payments running through a number of years, the payee agrees to pay at a fixed time a definite sum of money, the payment is one of an endowment; but if the *definite sum is payable in fixed installments at certain times or intervals, the contract is in the nature of an annuity contract.*"
>
> Citing *Fidelity Investment Association* v. *Emerson,* 318 Ill. 548, 149 N. E. 530, the first headnote of which is as follows:

"A contract whereby a person agrees to pay a definite sum in fixed installments at certain times in consideration of a series of payments running through a number of years as annuity, is valid and recognized by Laws

1907, p. 370, Sec. 6, as amended by Laws 1909, p. 265, prescribing conditions of life insurance policies and exempting annuities."

It is interesting to note that the Company titled the contract in the Illinois case as "Special Income Contract", and the Court held it to be an "Annuity Contract", whereas in the instant case the Metropolitan titled the instant contract as "Income Policy", "Whole Life", so that, whether it be classified as "a Policy of Life Insurance" or as an "Annuity Contract", it is manifest that the legislature intended to exempt such policies or contracts.

POINT V.

The title to the policy and supplementary contract remains in the bankrupt and does not vest in the trustee.

While this title expresses the conclusion of the other points discussed, it also covers the point as to what property passes to the Trustee. This Court has held that while life insurance is property, it is peculiar property, and that this Court and Congress have so recognized it. By the line of decisions construing the Bankruptcy Act of 1867 and the Bankruptcy Act of 1898, cited in *Burlingham* v. *Crouse,* it has been held by this Court that the title to life insurance policies, and the term is used in its broadest possible sense, having no cash surrender value, remains in the Bankrupt, and did not pass to the Trustee. This line of decisions applied the term life insurance to "annuities" and all classes of insurance, and the Congress recognized this as the law of the land when it added to the Act of 1898 the provision relative to insurance policies having a cash surrender value. In short, the Court had held, and Congress approved the decisions, that insurance policies having no cash surrender value *were not assets of the estate and did not*

pass to the Trustee. The cash surrender value of this policy being exempt under Tennessee statutes, the policy and supplementary contract were not assets of the estate, and the title thereto remained in the bankrupt.

This Court has not only repeatedly held this to be the law, but stated the principle in several different ways in *Burlingham* v. *Crouse,* one of which we quote:

> "We think it was the purpose of Congress to pass to the Trustee that sum which was available to the bankrupt at the time of bankruptcy as a cash asset; otherwise to leave to the insured the benefit of his life insurance policy."

Coming now to the Bankruptcy Act, the Congress knew that all sorts of insurance was being written under the general designation of "life insurance." Congress knew that "Annuities" and "Endowments," which strictly speaking might better be called investments, were commonly classed as life insurance, and in order to avoid any discussion as to what was embraced in the classification of "life insurance," Congress purposely omitted the word "life," and made the statute apply to "any insurance policy." This supplementary contract is certainly an insurance policy, and as such the title thereto does not pass to the Trustee under the first part of subsection 5 of Section 70a.

Again quoting from *Burlingham* v. *Crouse,* the Court said:

> "As we have construed the statute, its purpose was to vest the surrender value in the trustee for the benefit of the creditors, *and not otherwise to limit the bankrupt in dealing with his policy.*"

Applying this language to the instant case, the cash surrender value being exempt under the Tennessee Statute, the purpose of the Bankruptcy Act was to leave the title to

the policy in Legg and not to limit him in dealing with his policy or with the disability payments under the policy.

It is thought the case of *Hiscock* v. *Mertens, supra,* in which the Supreme Court held that the insured was entitled to the profit of about $5,000.00 which accrued on his policy within six months is not only illustrative but direct authority for holding that the disability benefits follow the policy and that Legg is entitled to them in this case.

Referring to the Tennessee Statutes:

While the Referee based his decision upon the ground that the policy and supplementary contract were separable and were two contracts, and while we think that by their terms and by following the separation of the policy and contract to the logical conclusion of such separation, it is clear that they are inseparable, yet we do not consider this point decisive of the case.

In the first place, there is a contingency, on the face of the supplementary contract as to the person to whom the disability payments are to be made. In the event of "mental incapacity" of the insured, the contract provides that these payments are to be made to the "beneficiary of record under said policy." It is believed that this alone is sufficient to prevent the absolute title and unlimited right to receive the disability payments, from vesting in the Trustee.

It was held in the case of *Mutual Life Ins. Co.* v. *Jeremiah Smith, Jr., Trustee,* 33 L. R. A. (N. S.) 439 at 442, that the rights of the life insurance company in a policy must be respected, and this supplementary contract states that it is "attached to and made a part of (the) life insurance policy," and it further provides that the supplementary contract cannot be carried except in connection with the main policy. Therefore by the terms thereof, the policy and contract are inseparable, and are one contract of insurance, and as such is exempt under the provision of Section

8458 of the Code of Tennessee, that "The net amount payable under any policy of insurance" shall be exempt.

The maxim that a Court will not ordinarily enter an order which it cannot enforce points to the logical conclusion that the disability benefits go with the policy. When the Court gives Legg the cash surrender value of the policy, it gives him the title to and control over the policy and the disability payments payable under the policy. Legg can take the cash surrender value and cancel the policy, and thereby stop the disability benefit payments, and nullify the order of the Court directing same to be paid to the Trustee. Therefore it is a contradiction to attempt to give to Legg the title to the policy and the cash surrender value thereof and yet say that his title is or can be limited by taking the benefits of the title away from him.

Whether it be treated as the net amount payable under a life insurance policy or under an annuity contract, section 8458 of the Code is decisive of the case in favor of Legg. Under the old statute, insurance policies payable to the insured husband, and the cash surrender value of such policies, were held to be exempt in favor of his widow and children from the claims of creditors of the husband, both *before* and *after* his death. Please observe that such policies were payable to the insured and not to the wife and childen who were made the beneficiaries by force of the statute.

Under the new statute, Section 8458 "The net amount payable under policy of life insurance or under any annuity contract upon the life of any person made for the benefit of, or assigned to, the wife and or children, or dependent relatives of such person shall be exempt from all claims of the creditors of such person." The requirements of this section are (1) that the life insurance policy or annuity contract must be upon the life of the debtor, and (2) made for the benefit of or assigned to the wife or children of the

insured. It does not say that the cash surrender value or the net amount payable under the policy or annuity contract *during the life of the insured* shall be payable to the beneficiaries in order to be exempt. On the other hand, like the old statute, it contemplates that during the life of the insured, he will collect "The net amount payable" and apply the same to the support of his wife and or children. Therefore the same construction the Courts have given the old statute applied to the new statute leaves no doubt about the proposition that the payments under the policy or contract, during the life of the insured, may be made to him, and that the same are exempt. In other words, the new statute exempts all payments, whether made to the insured or the beneficiaries, provided only that the policy or contract has been made for the benefit of or assigned to the wife or children.

The insurance policy in this case expressly made such provision by stating that the cash surrender value is to be paid to the insured and that the disability payments are to be paid to the insured, but in the event of his mental incapacity, the disability benefit payments are to be paid to the beneficiaries. In other words, even though disabled physically, the money is paid to the insured to use in supporting the beneficiaries, unless he becomes mentally incapable, in which event he is not allowed to handle the money, either under the policy or under the laws of the land.

Notwithstanding the opinion of the Circuit Court of Appeals that this contract is not an annuity, it is confidently submitted that it is an annuity both in the sense intended by the Legislature, and as defined by the Courts, and especially by the Tennessee Court in *Morgan* v. *Pope,* 7 Cold. (Tenn.) 541, from which we quote:

> "The duration of an annuity depends upon the construction of the instrument by which it is created. It

may be perpetual, for life, or for a period of years, or subject to such specific limitations as to its duration as the grantor or donor may impose."

The law could not have been better stated to fit the facts of this case if the court had had the facts before it when stating the law in 1867.

It is respectfully submitted that the disability benefit payments follow the title to the policy in the hands of the bankrupt both under the Bankruptcy Act and the Tennessee Statute.

Conclusion.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, in order that the Petitioner's rights under the statutes, laws and Constitution of the United States may be preserved to him, and that to such an end a writ of certiorari should be granted and this Court should review the decision of the United States Circuit Court of Appeals, Sixth Circuit, and finally reverse it.

HENRY ROBERTS,
J. K. BROWN,
Counsel for Petitioner.

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IN THE

Supreme Court of the United States.

No. 54, OCTOBER TERM, 1935.

GEORGE EVERETT LEGG, *Petitioner,*

vs.

E. ST. JOHN, TRUSTEE IN BANKRUPTCY,

On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

BRIEF FOR PETITIONER, LEGG.

Future monthly "disability" payments to a totally and permanently disabled policyholder, belong to him and his children, and do not pass to his Trustee in Bankruptcy, because

1. **They are exempt under the laws of Tennessee.**
2. **They have no Cash Surrender Value and do not pass to the Trustee.**
3. **Even if they had a Cash Surrender Value, the bankrupt can pay such value as of the date of filing the petition in bankruptcy, and hold the policy free from his creditors.**
4. **Future "disability" benefits are akin to future earnings, and the Trustee is not entitled to them.**

HENRY ROBERTS,
J. K. BROWN,
WM. MARSHALL BULLITT
Counsel for Petitioner.

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THIRD POINT: Even if the "Disability" feature is neither "Life" insurance nor an "Annuity" (and consequently, non-exempt under Tennessee Laws), still it is certainly an "Insurance Policy" under § 70(a)(5) of the Bankruptcy Act; and, therefore, either

(a) The Disability feature has no Cash Surrender Value whatever, and does not pass to the Trustee; or

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(b) Its Cash Surrender Value (if any) should be ascertained, and Legg given an opportunity to pay the same to the Trustee, and then to hold the "Disability" contract (and the future payments thereunder) "free from the claims of the creditors" 37–44

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OPINION BELOW: *Legg* v. *St. John*, 76 F. (2d) 841.

JURISDICTIONAL AUTHORITY: Judicial Code § 240(a) as Amended by Act of February 13, 1925.

STATUTES INVOLVED: Tenn. Code (1932) §§ 8456, 8458; Bankruptcy Act §§ 6, 70(a); 30 Stat. 548, 565.

DATE OF JUDGMENT: District Court, September 5, 1934 (R. 15); C. C. A. April 15, 1935 (R. 22); certiorari granted May 27, 1935 (R. 26).

NATURE OF THE CASE, RULINGS, ETC. Legg had a life insurance policy, which, *inter alia*, provided that if he became totally and permanently disabled, the company would pay him a monthly disability income so long as he remained disabled.

Legg became totally and permanently disabled. Later he went into bankruptcy. The C. C. A. held that the future monthly disability payments passed to the Trustee in Bankruptcy for the benefit of Legg's creditors, until his debts should be paid (*Legg* v. *St. John*, 76 F. (2d) 841; R. 3, 10, 25). Legg insists that they are *exempt*, and should go to him.

IN THE

Supreme Court of the United States

No. 54, OCTOBER TERM, 1938

GEORGE EVERETT LEGG, *Petitioner,*

v.

E. ST. JOHN, Trustee in bankruptcy.

On writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

BRIEF FOR PETITIONER LEGG

The sole question involved is whether the future $134.52 monthly "Disability" benefits under a Life Insurance policy, should be paid,

1. To the "totally and permanently disabled" bankrupt policyholder (on the ground that such "disability" benefits are (1) *exempt* by State or Federal statute from the claims of creditors, or (2) after acquired property akin to *future earnings, Local Loan Co.* v. *Hunt,* 292 U. S. 234);

Or whether they should be paid

2. To the policyholder's Trustee in Bankruptcy (on the ground that a "Disability" contract is not an "insurance policy"; that Legg's *disability* at the time of his bankruptcy was in the nature of a *cash asset,* and the "disability" benefits thereafter arising therefrom are *not* exempt by either State or Federal statute; but pass to the Trustee as *non*-exempt property).

OPINION BELOW: *Legg* v. *St. John,* 76 F. (2d) 841 (R. 22).

RELEVANT STATUTES

(Bankruptcy Act July 1, 1898, §§ 6, 70(a); 30 Stat. 548, 565. Code of Tennessee (1932), §§ 8456, 8458).

The Statutes are set out in the Appendix at page 49 *infra;* but the pertinent parts are briefly summarized in the margin*.

STATEMENT OF THE CASE

On September 28, 1927, the Metropolitan Life issued to Legg a Life Insurance policy, with the following monthly Disability and monthly Death benefits:

(1) If Legg became "totally and permanently *disabled*", the Company would (a) waive payment of the

---

*** Tennessee Code (1932) Secs. 8456, 8458**

Sec. 8456. Any *life* insurance on a husband shall inure to the benefit of his wife and children, and the money arising therefrom shall go to them free from the husband's creditors.

Sec. 8458. The net amount payable under any *policy of life insurance* or under any *annuity contract* made for the benefit of, or assigneed to the wife or children shall be exempt from all claims of creditors, irrespective of any reserved right to change the beneficiary.

Bankruptcy Act Sec. 6, 70(a)

Sec. 6. The Bankruptcy Act shall not affect property that is *exempt* by the laws of the State of the bankrupt's domicile, *i. e.*, Tennessee.

Sec. 70(a). The Trustee in Bankruptcy shall be vested with title to all the bankrupt's *non*-exempt property; with a special provision that,

> "When any bankrupt shall have *any insurance policy* which has a cash surrender value payable to himself . . . . he may . . . pay or secure to the trustee the sum . . . and continue to hold, own, and carry such policy free from the claims of the creditors . . . ."

future $475.22 annual premiums, and (b) pay to him, or if mentally incompetent to the beneficiary, a monthly income of $174.52, so long as such disability continued (R. 6 C).

(2) If Legg *died*, the Company would pay his beneficiary* 240 installments of $100 per month for 20 years aggregating $24,000 (R. 6 A).

On June 18, 1930, Legg became **totally and permanently disabled**; and thereafter the Company paid $174.52 per month on the 18th of each month, to and including February 18, 1934, when a creditor's injunction prevented further payments (R. 3, 7, 17).

On March 8, 1934, Legg filed a petition in bankruptcy; and on the same day was adjudicated a bankrupt (R. 2).

On April 10, 1934, the Trustee reported (R. 3):

> **"I hereby set aside said life insurance policy and the cash surrender value thereof as exempt,** but [I report] that the disability benefits are not exempt, but is an asset of the estate."

That report was approved by the Referee, the District Court, and the C. C. A. (R. 10, 12-15, 25). Consequently, Legg did not pay [under Bankruptcy Act § 70a] any Cash Surrender Value to the Trustee.

The only question presented here, is:

Who shall get the <u>future</u> monthly "Disability" benefit payments?

---

* On May 8, 1931, Legg named his four children as beneficiaries reserving the right to change the beneficiary (R. 6 G).

The C. C. A.'s Decision

[*Legg* v. *St. John*, 76 F. (2d) 841; R. 22.]

The C. C. A. (6th) *correctly* held that the following benefits were *exempt property* under the Tennessee laws, and were properly set aside to the bankrupt (R. 23; Cf. R. 3, 9, 10, 12-15), to-wit:

> (A) *Death* benefit of 240 installments of $100 a month for 20 years aggregating $24,000; and also the Cash Surrender Value* (if demanded) of the entire policy on the date of adjudication (Tenn. Code, §§ 8456, 8458);
>
> (B) *Disability* benefit to the *limited extent* of (*a*) waiver of the $475.22 annual premium during disability and (*b*) $40 per month out of the $174.52 monthly "Disability" income (Tenn. Code, § 7711);

But the C. C. A. *erred* in holding:

First: That the policy was *split up* into two separate, distinct contracts, one of "Life" insurance, and another of "Disability" insurance, subject to *different* rules and statutes; and

Second: That such "Disability" benefit was, in turn, *further split up* into (1) the *waiver* of $475.22 annual

---

* The Cash Surrender Value so set aside would be (if demanded), the Cash Surrender Value as given in the Table (R. 6 B), *minus* the "$1400 and something" indebtedness on the Policy (R. 17); but of course, the bankrupt would never demand such few hundred dollars of Cash Surrender Value, because it would cancel the Policy.

premiums [B(*a*) *supra*] to go to the bankrupt as his *exempt* insurance property; and into (2) "Disability" income also further *split up*, so that (*a*) $40 a month should also go to the bankrupt as his *exempt* property [B(*b*) *supra*] while (*b*) the *balance* of the "Disability" income ($134.52 monthly (C) *infra*) should go to the Trustee in Bankruptcy (as Legg's *non*-exempt *non*-insurance property), to-wit:

> (C) $134.52 a month (*i. e.* $174.52 *minus* the said $40), so long as Legg's disability continued.

The correctness of that holding (C) is the sole question in this case.

Specification of Errors

The C. C. A. erred in holding that $134.52 per month, of the future "Disability" benefit payments, was *non*-exempt and should be paid to the Trustee in Bankruptcy so long as Legg continued to be "disabled", until his debts were paid in full.

[See next page for "Summary of Points Discussed"]

SUMMARY OF POINTS DISCUSSED

1. The Legg Policy is not divided into two separate distinct contracts, one of which (Life) is exempt property, while the other (Disability) is non-exempt. It is simply a Life Insurance contract, with both "Disability" and "Death" Benefits; and hence was exempt under both the Tennessee law and the Bankruptcy Act (pp. 7-29, infra).

2. The Policy is exempt property (Tennessee Code Sections 8456, 8458); and that exemption covers the monthly "Disability" Benefits as well as the monthly "Death" Benefits (pp. 30-37, infra).

3. Even if the "Disability" feature were neither "Life" insurance nor an "Annuity" [and consequently, non-exempt under Tennessee laws], still it is certainly an "insurance policy" under Sec. 70(a)(5) of the Bankruptcy Act; and, therefore, either,

(a) The "Disability" feature has no Cash Surrender Value whatever and does not pass to the Trustee; or

(b) Its Cash Surrender Value (if any) should be ascertained, and Legg given an opportunity to pay the same to the Trustee, and then to hold the "Disability" feature (and the future benefit payments thereunder) "free from the claims of the creditors" (pp. 37-44, infra).

4. Any future "Disability" payments to Legg are in the nature of future earnings, or after-acquired property, neither of which passed to the Trustee upon the filing of the petition in bankruptcy (pp. 44-48, infra).

FIRST POINT

The Legg Policy is not divided into two separate independent distinct contracts, of which one (Life) is exempt property, while the other (Disability) is non-exempt.

It is simply a Life Insurance Policy with both "Disability" and "Death" Benefits; and hence was exempt under both the Tennessee law and the Bankruptcy Act.

In accordance with Legg's application for a "Whole Life with Disability" policy (R. 6 E; Q. 15 Part A), the Metropolitan Life issued to him a policy with both "Disability" and "Death" benefits, which may be briefly summarized as follows:

Analysis of the Legg Policy

Death benefits. For a $425.83 annual premium, there was a Death benefit, payable in 240 monthly installments of $100 each (aggregating $24,000), commutable into a $17,450 single lump sum (R. 6 A).*

Disability benefits. In consideration of an additional premium of $49.39 payable annually, the Metropolitan Life agreed that, in the event of Legg's total and permanent disability before he was 60 years old, it would (1) waive the entire $475.22 premium for both the "Death" and "Disability" benefits, and (2) pay to Legg, or if

* Two pages of "Provisions and Benefits" set out various options and non-forfeiture Benefits, *i. e.*, "paid up" and "extended" insurance, loans and cash surrender values as given in a Table (R. 6 B, D); provisions for reinstatement, participation in surplus, loans, etc., and incontestability.

mentally incompetent to the beneficiary, a monthly income of $174.52 as long as his disability continued.

Legg was given the option, at any time, of cancelling the Disability benefit feature, in which event he would no longer have to pay the $49.39 additional premium; but he could *not* cancel the "Death" benefit and at the same time *retain* the "Disability" feature.

The provision for the "Disability" feature was given on a full page of the policy headed (R. 6 C);

> **"Total and Permanent Disability**
>
> WAIVER OF PREMIUMS AND PAYMENT OF MONTHLY INCOME
>
> Supplementary Contract attached to and made part of Life Insurance Policy No. 5081405-A issued on the Life of George E. Legg."

The "Disability" feature was printed on a separate page (rather than by a numbered paragraph) so that the *same* "Disability" benefits could be physically inserted as an integral part of *any* of the numerous different life insurance policy forms. Of course, the "Disability" feature *could* have been printed as an integral part of each policy; and its separate printing [and insertion] was a mere matter of convenience and printing economy.

It will be referred to as the "Disability" contract (the phrase used by the C. C. A.), or as the "Supplementary Contract", **but without implying that it is in any way a separate or distinct contract.** It is merely one of the

various contractual provisions contained in the Legg policy.*

If the provision for "Disability" benefits had been printed as a separately numbered Paragraph 15 (instead of being printed upon a page to itself and physically inserted in, and attached to, the policy form), it would simply have been one of the fifteen provisions in the Life

---

* *Express Recitals.* The caption describes it as a

"Supplementary Contract attached to and *made part of* Life Insurance Policy No. 5081405-A issued on the life of George E. Legg."

It expressly provides:

"In consideration of the application for this Contract, as contained in the application for said Policy, the latter being the basis for the issuance hereof . . ."

"This Supplementary Contract shall be deemed to be *a part* of the above numbered Policy . . ."

Interwoven Provisions. The following quotations are illustrative:

"While said Policy and this Supplementary Contract are in full force"

The premiums waived are those "under said Policy and this Supplementary Contract";

The premium waiver shall begin on the "anniversary of said Policy";

The Disability benefits shall not be payable if "the said Policy shall be in force by virtue of any non-forfeiture provisions thereof".

If there be any "indebtedness to the Company under said Policy" the interest thereon shall be deducted from the Disability benefits;

The Supplementary Contract "shall automatically terminate" upon default in the payment of "any premium on said Policy".

policy, other provisions being for loans, cash surrender values, paid up and extended insurance, participation in surplus, etc.

The provisions of the modern Life insurance policy are the result of over a hundred years of evolutionary process, and can best be understood by a brief summary of that development.

EVOLUTION OF LIFE INSURANCE POLICY FORMS*

Early Form. Originally, life policies were a mere promise to pay a lump sum at death, provided the annual premiums were fully paid; with rigid restrictions as to residence, travel, and occupation; and a *complete forfeiture* in event of any default in payment of premium,

* See Maclean, J. B.: Life Insurance (4th Ed.); Hutcheson, W. A.: The Evolution of Life Insurance, T. A. S. A. XXI, p. 331; Hutcheson, W. A.: Some Facts in the Development of Life Insurance in the U. S., Proceedings of the Association of Life Insurance Presidents, (1920) p. 53; Macaulay, T. B.: Canadian Life Assurance, Proceedings of the Association of Life Insurance Presidents, (1920) p. 107; Knight, C. K.: The History of Life Insurance in the United States to 1870; Zartman and Price: Yale Readings in Insurance, chaps. 5-7; Moir, H.: Liberality of Modern Policies, T. A. S. A. XII, p. 175; Elston, J. S.: The Development of Life Insurance in the United States during the Last Ten Years, T. A. S. A. XXVII, p. 330; Kopf, Edwin W.: The Early History of the Annuity, P. C. A. S. XIII, p. 225; Moir, H.: Divergent Developments of Life Insurance in Britain and America, T. A. S. A. XXIX, p. 51; T. A. S. A. is the abbreviation for the Transactions of the Actuarial Society of America and P. C. A. S. is for the Proceedings of the Casualty Actuarial Society; Dawson's "Business of Life Insurance", pp. 61-106; "Elements of Life Insurance", pp. 97-111; "Things Agents Should Know", pp. 218, 226-234; and Mass. Reports on Life Insurance, 1859-1865.

suicide, duelling, military service, or violation of any restrictive provision.

Dividend and Non-forfeiture Clauses. About ninety years ago, mutual companies began to distribute surplus accumulations in the form of scrip or small "paid-up" additions to the face of the policy; followed by policy provisions to the same effect; later extended to cash payments convertible into various forms of policy benefits (cash, cash on deposit at interest, reduction of premium, paid-up additions, extended insurance, etc.); followed by the so-called "deferred" or "tontine" dividends until forbidden by law in 1906.

Beginning in 1860, (progressively extended by statute and contract) "non-forfeiture" benefits were first introduced, so that in the event of a failure to pay a premium, the policyholder (instead of having to forfeit the results of many years' payments) was given various optional benefits, such as paid-up insurance in a reduced amount, extended insurance of the face amount for a limited time, guaranteed cash values, "grace" periods for paying premiums, etc.*

Liberalizing provisions. Incontestable clauses were introduced; restrictions as to occupation, residence, travel, military service, etc., were removed or greatly modified; a copy of the application was attached to and made a part of the policy, and the statements therein were made representations and not warranties.

"Endowment" policies became frequent, where the face of the policy was paid *before* Death.

* See Mass. Reports on Life Insurance, 1859-1865, pp. 21-24; Report for 1863, p. 222.

Modern extensions of Life Insurance. As early as 1877 some policies provided that in the event of total and permanent disability, a part of the insurance should be paid immediately, and the balance paid at death ("Disability Benefits in Life Insurance Policies", p. 2, 2d. Ed., Actuarial Society of America, 1932).

About 1906 "Standard provisions" began to be required by law to cover many of the foregoing subjects, as well as reinstatements, misstatement as to age, etc.;* and gradually life insurance policies began to contain (either required or authorized by statute or State Insurance Departments) a great many new Benefits, such as,

(1) Instead of paying the face of the policy in *one lump sum,* payment (at the insured's option) would be made in annual installments for many years (as in Legg's policy).

(2) Policies could be changed into different forms.

(3) Very liberal "extended insurance" benefits.

(4) Insurance on "loans" so that if Death occurred before a loan was repaid, the full face of the policy would still be paid.

(5) *Total and Permanent Disability benefits.*†

(*a*) About 1910, the companies began to insert clauses that if the insured became "totally and per-

* Conference of Governors, Attorney Generals and Insurance Commissioners at Chicago, February, 1906; and Sub-Committee's Report, December 1, 1906, entitled "Recommendations for Uniform Legislation Relating to Life Insurance".

† See Hunter & Phillips' "Disability Benefits in Life Insurance Policies", Actuarial Study No. 5 (2d Ed.) Part I ch. I-V. (1932) "Disability Benefits. Recent Developments in the U. S. A." Transactions of the Tenth International Congress of Actuaries, Rome 1934 xii; "Disability Benefits under Life Insurance Contracts in the United States and Canada" and various "Papers on Disability Benefits" at the Eighth International Congress of Actuaries, London, 1927.

manently" disabled (possibly unable to pay his life insurance premiums), the company would waive the payment of premiums so long as such disability continued (*New York Life* v. *Edwards,* 271 U. S. 109, 117, 118). Some companies made no charge in their premium for such a clause. Others made a trifling increase, say twenty-five cents, for that additional feature.

(*b*) A little later, the "Disability" benefit was expanded so as to provide not only for (1) such waiver of premiums, but also for (2) the payment of the face of policy in ten (or more) *annual* installments, generally beginning about one year after disability—a sort of acceleration or precipitation of payment of the policy—the amounts so paid to correspondingly reduce the final amount of the policy payable at death, thus extinguishing the entire policy in (say) ten years, even *without* Death. For thus anticipating such payments of the insurance before death, some companies slightly increased their premiums. (Cf. U. S. War Risk Insurance Act, Oct. 6, 1917, 40 Stat. 398, and World War Veterans Act 1924, § 300, 43 Stat. 624, providing for "United States Government *life* insurance" with "Death" benefits up to $10,000, and with "Disability" benefits payable in monthly installments up to $57.50 for each $10,000 policy, the aggregate of such monthly installments paid, to be *deducted* from the face of the policy upon death.)

(*c*) The next step—a very important one—was to make such *annual* payments, but *without reducing*

the amount of insurance payable at death; and for that privilege the companies also increased the premium to a small extent.

(*d*) About 1920, a further liberalization followed, by which (instead of *annual* payments), the company paid a *monthly* income—generally 1% of the face of the policy—thus giving the permanently disabled policyholder and his family a monthly income to live on, instead of compelling him to wait till the end of the year.

(*e*) The next step in the evolutionary process of this phase of Life Insurance, was this: instead of requiring the policyholder to *prove* that his disability was both total *and* would continue for life, certain circumstances were specified, in the event of which the permanence of existing total disability would be presumed.

(6) *Double Indemnity benefits.*

(*a*) About 1915, many Life policies began to contain a clause that if the policyholder met his death while riding on a *common carrier*, the company would pay double the face of the policy.

(*b*) About 1918, a further liberalization in Life policies took place. The policyholder was given the privilege of paying a very small increase in premium, and have his policy contain a clause that the company would pay double the face of the policy—so-called "Double Indemnity"—if he met death by accidental means, a very popular provision in present day Life policies.

BASIS OF ALL LIFE INSURANCE CALCULATIONS

The many forms of life insurance policies, *e. g.* Term, Ordinary Life, Limited Payment Life, Endowment, etc., and also Annuities, (whether with or without "disability" benefits) are all based on exactly the same principles for every age and on every plan* (Cf. *Maddox* v. *Mutual Life,* 193 Ky. 38; *Miller* v. *New York Life,* 179 Ky. 246).

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* For all Life Insurance policies providing for *Death* benefits only, the Company assumes three things, to-wit:

(*a*) That a very large group of persons, say 100,000 of the same age, will, at the same time, take out exactly similar policies of the same amount.

(*b*) That those persons will die strictly in accordance with some specified Mortality Table; so many each year, no more and no less; and that the deaths will take place at the end of the respective years.

(*c*) That the Company will earn some specified rate of interest (say 3%) on its funds.

For all Life Insurance policies providing for *Death and Disability* benefits, the Company assumes five things, to-wit:

(*a*), (*b*) and (*c*) above; and also two further things in accordance with some Disability Table, *i. e.*

(*d*) That of the 100,000 persons assumed in (*a*) above, in each year a certain number (but not the same number each year) will become totally and permanently disabled; and

(*e*) That of the number so becoming totally and permanently disabled in any one year, a definite number (no more and no less but not the same number each year), will annually *cease* to be totally and permanently disabled (either by death or by recovery from the disability).

Upon those assumptions, and by a purely arithmetical calculation, the Company determines the premiums upon the different forms of policy.

Because of the assumptions on which based, and the small premiums charged for the Total and Permanent Disability benefits, they could only be so issued as an incident to and as a part of a Life Insurance (or Annuity) Policy. Such benefits cannot be obtained separately. After having been issued as a part of a Life Insurance Policy, they cannot be continued in force independently of the Death benefit in the Life Insurance Policy.

From the foregoing review of the evolution of life insurance policies (the standard "old line" life companies having about seventy million (70,000,000) policyholders, about ninety-eight ($98,000,000,000) *billions* of life insurance in force, and with about twenty-two ($22,000,000,000) *billions* of assets on hand), it is easily seen that the Legg policy is simply an ordinary Life insurance policy covering both "Death" and "Disability"; and that those subjects are so woven together that while the "Death" benefits may be obtained or continued separately, the "Disability" feature can neither be obtained nor continued separately, but only as an incidental feature to the regular "Death" benefit.

Criticism of the C. C. A.'s Decision

The Referee, District Court and C. C. A. held that the Legg policy consisted of two entirely separate and distinct contracts, one of which was *life* insurance, and the other *permanent disability* insurance, and that totally different

principles governed these alleged distinct contracts. The Referee said (R. 8, 9):

> "That the said life insurance policy and the said supplementary contract as to disability benefits are two wholly separate contracts, one a life insurance and the other a contract of indemnity against total and permanent physical disability . . . This contract for disability benefits *is not a life insurance policy,* and the provisions of law peculiar to life insurance do not govern."

The C. C. A. said (R. 24):

> "Considered separately, the disability contract in no sense provides for life insurance. It is effective before death, upon a contingency, and is payable directly to the insured.* . . . In short, the disability contract *is not a life insurance contract* . . ."

1. That decision is erroneous, because it *fails to recognize the evolution* in modern life insurance policy forms. It undertakes to split up the Legg policy into two distinct contracts, (a) old-fashioned life insurance, and (b) disability insurance; and then to apply different rules as to them, respectively; *whereas,* the proper view point is, that the entire Legg policy is one of installment *life* insurance, providing (1) for the payment at *death* of 240 monthly

* So is Endowment insurance, which this Court expressly recognized as *Life* insurance in *Burlingham* v. *Crouse,* 228 U. S. 459, 472, saying:

> "Originally *life* insurance policies were contracts in consideration of annual sums paid as premiums for the payment of a fixed sum on the death of the insured. It is true that such contracts have been much varied in form since, **and policies payable in a period of years, so as to become investments and means of money saving, are in common use.** . . . While *life* insurance is property, it is *peculiar* property."

installments and (2) for a waiver of premium and a payment of monthly income, in the event of total and permanent *disability*, which latter provisions are but incidental to, and a part of, the main *life* ins[redacted] (See authorities, pp. 23-29, *infra*).

Of course, if the State statutes would permit such a thing, an insurance policy *might* be so drawn as to contain *two distinct* and *totally independent* contracts, *i. e.* one for "life" and the other for "disability" insurance—subject, respectively, to the different statutes (if any) applicable to those two fields of insurance.

But the Legg policy was not that kind of policy. The Legg policy was carefully designed to be a "life" policy, with both "Disability" and "Death" benefits so interwoven as to be an integral part of the "life" policy.

The unification of the "life" and "disability" provisions in the Legg policy is illustrated by the provision that the Metropolitan Life may deduct any unpaid interest on the policy loan from the monthly disability payments; consequently, if Legg quits paying interest upon his policy loan, the Metropolitan Life can collect the interest by deducting it from the future payments which the C. C. A. directed it to make to the Trustee in Bankruptcy; but if the Metropolitan Life should exercise its contract right to make such deduction, the Trustee would probably rule it for contempt in failing to pay to the Trustee the full $134.52 per month, which the Bankruptcy Court ordered the Metropolitan Life to pay to the Trustee (R. 10). The C. C. A.'s decision ignored the Metropolitan Life's rights in this respect.

2. The "Disability" contract provided for two benefits during disability, *i. e.*

Benefit No. 1—Waiver of premiums on entire policy;
Benefit No. 2—Monthly benefit payment.

If, as the C. C. A. held, the "Disability" contract was *not* one of "life" insurance (and hence *non*-exempt under the Tennessee statute exempting *life* insurance), then *both* of its Benefits, No. 1 *and* No. 2, should have gone to the Trustee in Bankruptcy as *non*-exempt property, in which event (A) the Trustee would collect No. 2, *i. e.* the monthly "Disability" payments so long as Legg remained disabled: and (B) the Trustee would be entitled to collect the ***asset value*** of No. 1 (*i. e.* "waiver of premiums") which is a valuable and determinable monetary right, to-wit, $475.22 per year during Legg's disability, but since the Trustee has no other method of enforcement of No. 1, he would, at Legg's death, be entitled to reimbursement (out of the proceeds of the life insurance) for the aggregate of the premiums waived, with 6% interest thereon.

Such a result of the C. C. A.'s theory is directly contrary to § 70(a) of the Bankruptcy Act, because, as to such *non*-exempt property, the bankrupt has the right, upon the payment of the Cash Surrender Value, if any, of such *non*-exempt property, to "hold, own and carry such policy free from the claims of the creditors" (*Holden* v. *Stratton,* 198 U. S. 202, 213; *Hiscock* v. *Mertens,* 205 U. S. 202, 214; *Burlingham* v. *Crouse,* 228 U. S. 459, 473;

Everett v. *Judson,* 228 U. S. 474; *Andrews* v. *Partridge,* 228 U. S. 479); and such a result would have been equally in conflict with the Tennessee exemption statutes, because any reimbursement (out of the policy's proceeds at death) to the Trustee of the amount of the premiums waived, would be to apply a part of the *proceeds* of the policy to the husband's creditors, which is precisely the thing that the Tennessee statutes prohibited (p. 30 *infra,* note).

In order to prevent that obvious conflict, the C. C. A. [after first holding that the Disability contract was *not* "life" insurance, so as to avoid the Tennessee exemption statute], retraced its steps and split up the Disability Benefits into (*a*) No. 1, a waiver of premiums (which it gave back to the bankrupt as "life" insurance exempt under the Tennessee statute), and (*b*) No. 2, a monthly income (which it gave to the Trustee in Bankruptcy as *non*-exempt property*).

The inconsistency of the C. C. A.'s position is obvious.

If the Disability contract was *not* "life" insurance, then the benefits provided by the Disability contract were *non*-exempt under Tenn. Code §§ 8456, 8458, and *both* Benefits Nos. 1 and 2 should have gone to the Trustee. But when the C. C. A. gave Benefit No. 1 to the bankrupt, that was an admission that the Disability contract was, in part at least, "life" insurance and hence *within* the terms of the Tennessee exempting statute.

But, how could the Disability contract be "life" insurance as to the waiver of premiums, and *not* "life" insurance

* Less $40 a month exempt under Tenn. Code Sec. 7711.

as to the monthly income? Neither benefit was contained in the so-called "life" part of the policy; but both benefits were physically contained in, *and solely in,* the one separate page constituting the Disability contract.

The C. C. A.'s position is manifestly erroneous in trying to hold that the Disability contract is *not* "life" insurance, in order to render it *non*-exempt under the Tennessee statute; and then to hold that *part* of it *is* "life" insurance, and, as such, is *exempt* and goes to the bankrupt.

Further argument is unnecessary to show that the C. C. A.'s position is untenable.

3. The C. C. A. cited no authority for its holding that the contracts were separate and distinct (R. 24). The Referee and the District Court relied upon *Chattanooga Sewer Pipe* v. *Dumler,* (1929) 153 Miss. 276, and *Cravens* v. *Robbins,* 8 Tenn. App. 435.

Neither case involved, or even considered, the Bankruptcy Act. Each turned exclusively upon the construction of a State exemption statute.

The Trustee's Brief errs when it says (p. 6) that the *Chattanooga Sewer Pipe* case decided that a disability contract was not "an insurance policy" within the meaning of the Bankruptcy Act. The "Disability" benefits involved in the *Chattanooga Sewer Pipe* case were due and payable more than two years *before* bankruptcy; whereas, the "Disability" benefits involved in the case at bar, are exclusively those to become due *after* the adjudication.

Cravens v. *Robbins,* 8 Tenn. App. 435, in a very scanty opinion, held that a $61 check paid for a "weekly indemnity for disability" under a policy of *health* insurance, was not exempt from execution under a statute exempting "*life* insurance" from execution. It is obviously not in point here, because it related to pure *health* insurance, and not to *life* insurance.*

* Although not cited by the courts below, not by the Trustee here, *In re Kern,* 8 F. Supp. 246, did decide that a Trustee in Bankruptcy was entitled to the *future* accruing "disability" benefits under a policy quite similar to the Legg policy.

The Court held that the New York statute exempting *life* insurance policies, did *not* exempt such *disability* benefits. The New York Legislature had previously corrected such a view, by the Act of May 14, 1934 (Laws of 1934, Ch. 626), which expressly provided that such "disability" benefits *should be exempt from seizure* by creditors.

In the *Kern* case, the District Court distinguished *Burlingham* v. *Crouse, supra,* on the ground that "It dealt only with *life* insurance" and added:

> "Here the policies combine two types of benefits. They embody a provision for life insurance and a provision for an annuity payable to the bankrupt on a contingency which has happened. The latter is not life insurance in any sense of the term; it more nearly resembles a health policy. . . . It can make no difference that in the present case the contract for life insurance and the contract for disability benefits happen to be set forth in one and the same policy."

There again, the District Court failed to appreciate the evolutionary process by which the old-fashioned life insurance policy had gradually expanded to include the more modern provisions above reviewed (pp. 10-14, *supra*), and that the policy still remained one of *life* insurance, notwithstanding the evolutionary addition of "double indemnity" and "disability" benefits.

Exactly contrary to the *Kern* case, is the opinion of Mr. Justice Cropsey of the Supreme Court of New York in *Ruvinsky* v. *Shonberg,* N. Y. Law Journal, Sept. 10, 1935. (See Appendix p. 50, *infra,* for CROPSEY, J's, review of the *Kern* case.)

The Legg policy was essentially one of *life* insurance. The additions, in the event of total and permanent disability, of (a) waiver of premium and (b) payment of a monthly income, did not deprive the policy of its character of *life* insurance, to which should be applied all statutes applicable to *life* insurance.

REVIEW OF AUTHORITIES

The statutes of many States recognize that various forms of "disability" and "double indemnity" benefits may properly be incorporated in policies of *life* insurance, without thereby making them subject to the laws governing either health or accident insurance.* Tennessee has no such statute, but its Insurance Commissioner has so recognized and approved that development (See Petition for Certiorari, pp. 25-27).

The Courts have generally so recognized the true nature of the present-day life policies.

In *New York Life Ins. Co.* v. *Edwards,* 271 U. S. 109, in applying the Revenue Act of 1913 to "life" insurance the Court assumed, without discussion, that the "disability" benefit contained in the "life" policies did not change their nature or convert them *pro tanto* into *accident* policies; and did not take them out of the law applicable to "life" insurance policies.

* See Appendix p. 52, *infra,* for list of State Statutes in nearly thirty States.

The case was decided upon the undisputed assumption that a "disability" benefit was an integral part of a *"life"* insurance policy.

In *Wittman* v. *Littlefield,* 142 Misc. 916 (Aff'd. 235 App. Div. 831), it was held that a New York statute exempting the "proceeds and avails" of a life insurance policy, also exempted the usual *"disability" income* payable under life policies, the Court saying:

> "The statute exempts the "proceeds and avails" of the policy. The disability clauses are customarily combined with and included in our present day insurance policies (Insurance Law § 70 as amd.). It is only fair to regard the *disability benefits* as within the purview of section 55-a."

In *Purcell* v. *Washington Fidelity Ins. Co.,* (1932) 141 Ore. 296, in reply to the question "What *accident or health* insurance have you . . .?", the applicant answered "None". He had a *life* policy, with the usual "disability" provision. The Court said there was no misrepresentation, saying:

> "We believe that it is a matter of common knowledge that the layman classifies a policy of insurance issued by a straight life insurance company like the Penn Mutual as life insurance, even though it contains a minor provision for protection against disabilities. We believe that the layman generally regards as health or accident insurance a policy which undertakes to indemnify against disabilities arising from ill health or accidents, even though it also stipulates for a sum payable upon death as the result of an accident."

Prudential Ins. Co. v. *Litzke,* (1934) —— Del. ——, 179 Atl. 492, describes the typical Life policy with a

monthly income "disability" benefit provision, as "a *life* insurance policy", saying:

> "The Company, having adopted disability benefits as additional inducement for the taking of policies . . . The policy here in issue is a life insurance policy carrying a disability clause . . ."

In *Paulson* v. *Montana Life Ins. Co.*, ——— Wash. ———, 43 Pac. (2d) 971, an ordinary life insurance policy calling for a lump sum premium, contained both "disability" and "double indemnity" benefits, with a provision for deducting a fixed sum from the premium, if the "disability" and "double indemnity" benefits were discontinued. In holding that the incontestable clause did not apply to the "disability" and "double indemnity" benefits, the Court said:

> "There was only the one policy. The policy was written as an entirety, having as incidental features to the straight life insurance, the disability and double insurance benefits. . . . As we have heretofore said, the outstanding policy was issued as an entirety."

In *Mutual Benefit* v. *Bell,* (1934) 49 Ga. App. 640, a man had two policies of life insurance, each with the usual "disability" clause. In applying for accident insurance, he was asked what other health and accident insurance he had. He did not disclose the existence of the two life policies with "disability" benefits. The Court held that there was no misrepresentation, because, as the Court said:

> "The fact that they [life insurance policies] contain total disability clauses would not render them straight

health and accident policies or what is ordinarily meant by health and accident insurance policies. *Provident Life* v. *Rimmer,* 157 Tenn. 597; *Logan* v. *Fidelity & Cas. Co.,* 146 Mo. 114; *Mutual Reserve* v. *Dobler* (C. C. A.), 137 F. 550; *Briggs* v. *Bankers Acc. Ins. Co.,* 214 Ill. App. 181."

In *Baranovich* v. *Horwatt,* 113 Pa. Sup. Ct. 467, 173 Atl. 676 a "group" life policy provided for paying the face amount in the event of permanent disability. It was held that the face amount was *exempt* from creditors, under a statute exempting the proceeds of a "group" policy. The Court said:

"It is a matter of general knowledge that life insurance policies are termed 'general', 'ordinary', 'old line', 'paid-up', 'tontine', 'assessment', 'endowment', etc., dependent upon the terms and conditions of the different forms of contracts. The newer forms of policies and their broader provisions are designed to meet competition between the companies and to attract purchasers. Cooley on Insurance, vol. 1, pp. 782, 783, states: 'Life insurance is not, however, necessarily insurance for the full term of one's life. Some life policies are contracts of investments as well as of insurance'. **The addition of these new features does not divest the policy of its chief character, or make it other than a life insurance policy.** We do not recall any policy of group life insurance that we have had to consider, and there have been a number of them, that did not contain a disability provision. **In passing upon policies containing total disability provisions, the courts have expressly referred to them as life insurance policies.** *Elwood* v. *New England Mut. L. Ins. Co.,* 305 Pa. 505; *Perlman* v. *N. Y. Life Ins. Co.,* 105 Pa. Super. Ct. 413."

Similarly, it is held that the usual provision for "double indemnity" (in case of death by accidental means) is not accident insurance, but is straight life insurance with the incidental provision for such "double indemnity".

In *Provident Life & Acc. Co.* v. *Rimmer,* 157 Tenn. 597, an applicant was asked:

> "What *accident* or health insurance have you . . . ?"

He did not disclose that he had two $10,000 policies of life insurance, each with a provision for "double indemnity" in case of death by *accident.*

The Court held that there was no misrepresentation or concealment, because those policies were policies of *life* insurance, and *not* of *accident* insurance. The Court said:

> "The policy in the Equitable Life Assurance Society covered loss of life from natural as well as external and accidental causes, and was life insurance. **The mere addition of the double indemnity clause providing for increased insurance upon proof of death by accident did not divest the policy of its character of insurance on life, or make the contract other than life insurance,** for insurance on life includes all policies of insurance in which the payment of the insurance money is contingent upon the loss of life." [Citing seven cases.]

In *Lamar Ins. Co.* v. *Culp,* (1934) 168 Tenn. 332 an applicant was asked: "Is your *life* now insured?". He failed to disclose a $7,500 *accident* policy. It was held that the converse of the rule in *Provident Life* v. *Rimmer,* 157 Tenn. 597, was "necessarily true"; and that in answer to

a question as to insurance upon his *life*, the applicant need not tell of an *accident* policy.

The *Rimmer* and *Culp* cases establish for Tennessee the rule (1) that a life policy with "double indemnity" in case of death by accident is *not* accident insurance, and (2) a policy insuring only against death by accident is *not* life insurance—even though life policies constantly contain insurance against death by accident.

In *Levin* v. *Scranton Life*, 304 Pa. 92, an ordinary life policy had a supplemental rider providing for "double indemnity" in case of death by accidental means. The man was injured *before* default in premium, but died *after* the default. The Court held that the insured could not recover as under an accident policy, because it was a *life* policy with "double indemnity" for death by accident; but it was *not* an accident policy.

New York Life v. *Doerksen*, 64 F. (2d) 240 (C. C. A. 10th), held that a policy with the usual "double indemnity" and "disability" benefits was a *life* policy, and was *not* an accident policy, the Court saying:

> "Decisions of the Supreme Court of Kansas have recognized a clear distinction between policies of life insurance, and policies of health and accident insurance; and have classified life insurance contracts with double indemnity provisions as life insurance policies, and not as health and accident insurance policies. *Balch* v. *Federal Life Ins. Co.*, 116 Kan. 560; *Zeigler* v. *Kansas Life Co.*, 120 Kan. 252."

The foregoing cases all rest upon a recognition of the evolution of "life" insurance policy forms—a view ex-

pressly recognized in *Burlingham* v. *Crouse*, 228 U. S. 459, 472, and aptly expressed in *Mutual Life* v. *Smith*, 184 Fed. 1, 3, as follows:

> "All insurance was once new, and insurance in its early stages covered few contingencies; but the business under the law has grown until the idea of insurance now spreads itself broadly over many subjects and many contingencies."

If we are correct that the Legg policy is simply a *life* insurance contract with both "disability" and "death" benefits, then it necessarily follows that the entire Legg policy is *exempt*

> (*a*) As *life* insurance, under the Tennessee Act; and
>
> (*b*) Under the Bankruptcy Act § 6, *because* it is exempt under the Tennessee Act;
>
> Being thus exempt, it could never, at any time, pass to the Trustee in Bankruptcy under § 70(a) (*Burlingham* v. *Crouse*).

If, for some unanticipated reason, it should be held to be *non*-exempt under the Tennessee Act, then it is subject to the insurance clause of § 70(a) of the Bankruptcy Act, by which, even then, the Trustee does not take title, until after the bankrupt has first had an opportunity to pay the Cash Surrender Value,—if any, in which event the bankrupt holds the insurance free from the claims of his creditors.

SECOND POINT.

The Legg policy is exempt property under Tenn. Code §§ 8456, 8458. That exemption covers the monthly "Disability" Benefits as well as the monthly "Death" Benefits.

1. *Exemption for "life insurance" and "money thence arising".* Tennessee Code § 8456 provides:

> "Any *life* insurance effected by a husband on his own life shall, in case of his death*, inure to the benefit of his widow* and children; and the *money thence arising* shall be divided between them according to the statutes of distribution, without being in any manner subject to the debts of the husband."

Are the "Disability" monthly payments exempt from Legg's creditors?—just as the Cash Surrender Value is admittedly exempt.*

The C. C. A. admitted that the Tennessee statute exempting life insurance must be liberally construed (*Dawson* v. *National Life,* 156 Tenn. 306, and cases therein cited; *In re Stansell,* 8 F. (2d) 363); but held that the Disability contract was not a *life* insurance contract; and, consequently, that the "disability" income was *not* exempt under § 8456 (R. 24).

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* Nothwithstanding the significant phrases "in case of his *death*" and "*widow*", the Tennessee Courts have definitely construed that statute to mean that a life insurance policy, and its Cash Surrender Value, are both exempt from the claims of the husband's creditors *during his lifetime,* as well as after his death (*Dawson* v. *National Life,* 156 Tenn. 306; *Lunsford* v. *Nashville S. & L. Corp.,* 162 Tenn. 179; *In re Stansell,* 8 F. (2d) 363).

"Disability" income is certainly money "arising" from the Legg policy. It is *exempt* under § 8456, *unless* the C. C. A. is correct in holding that the "Disability" contract is *not* life insurance.

To the C. C. A.'s argument on that point, we respond:

The C. C. A. wholly failed to understand the evolution of life insurance. The "life" and "disability" contracts are not separate and distinct (see pp. 7-29, *supra*).

If the Disability feature is a part of a "life" policy, then the "disability" benefits are *exempt* under the Tennessee statute; and, therefore, exempt under § 6 of the Bankruptcy Act.

2. *Exemption of money payable under any life policy or "any annuity contract."* A later Tennessee statute (§ 8458) was passed in broader terms so as to cover cases that § 8456 did not cover:

> § 8458. "The net amount payable under *any policy of life insurance* or under any *annuity contract* upon the life of any person made for the benefit of, or assigned to, the wife and/or children, or dependent relatives of such person, shall be exempt from all claims of the creditors of such person arising out of or based upon any obligation created after the effective date of this Code, whether or not the right to change the named beneficiary is reserved by or permitted to such person."

(A) § 8458 exempts the net amount *payable* under *any* policy of life insurance. It does not limit the exemption to *Death* benefits. It covers the net amount *payable* under a *life* policy.

Suppose a policy promised to pay $10,000 upon death or upon total and permanent disability. If a man became totally and permanently disabled, would not the $10,000 be exempt from his creditors? It would certainly be an "amount *payable* under" the policy, although not dependent upon *death.* The same rule should apply where (as here) the Legg policy promises to pay in monthly installments $24,000 on death, and $174.52 per month during disability.

(B) § 8458 next exempts the net amount payable "under *any annuity contract* upon the life" of the insured which has been "made for the benefit of or assigned to" his children. Legg designated his children as the beneficiaries of the policy (R. 6 G). Therefore, the Tennessee law exempted the "disability" income, *if* the "Disability" contract was an *"annuity* contract"?

Policies providing for monthly payments beginning at a date in the future, provide annuities; and are exempt from creditors under a statute exempting the "proceeds" of a life policy (*In re Horwitz,* 3 F. Supp. 16, and cases therein cited; *Fidelity Investment Assn.* v. *Emerson,* 318 Ill. 548; 1 Couch on Insurance, § 25); but as there had been a doubt in some decisions whether life insurance *exemption statutes* applied to annuity contracts, the Tennessee Legislature solved that doubt by § 8458 and made it perfectly plain that payments under *"any annuity contract"* should be exempt from the claims of creditors.

In *Bowers* v. *Reinhard* (C. C. A. 3d), decided July 12, 1935, a bankrupt had three contracts in the Equitable Life,

which provided that he should receive a monthly annuity at the age of 65 for the remainder of his life, with the right to surrender the policy and receive the cash value thereof, and to change the beneficiary or assign the contract. If the bankrupt died before the first payment, his wife would receive designated death benefits.

Under a Pennsylvania statute identical with Tenn. Code § 8458, the Court held that the contracts were *annuity* contracts and exempt from his creditors, saying:

> "We think it clear that where, as in this case, the wife is named beneficiary, the contract is 'made for the benefit' of the wife. The character of the contract is not altered by the fact that Bowers had the option to change the beneficiary. . . . This court has had occasion to construe the Act, when applied to life insurance policies. In *Dussoulas* v. *Lang,* 24 F. (2d) 254, affirming *In re Lang,* 20 F. (2d) 236, we held that the policy in suit was a *life* insurance policy for the benefit of the insured's wife, since she was the named beneficiary, even though the insured had the option to change the beneficiary. We think the same reasoning applied to *annuity* contracts."

The point in that case is that the C. C. A. (3d) held that the annuity contract was *"made for the benefit of"* the wife, even though she was only a contingent beneficiary. As the Tennessee statute is identical, the Legg "Disability" contract if an annuity contract, was certainly "made for the benefit of" his children, when it is provided that, if Legg became mentally incompetent, his children shall receive the monthly payments.

Furthermore, as policies payable to the husband are, nevertheless, exempt *during his lifetime* under § 8456 (p. 30, note, *supra*), the same reasoning exempts an annuity contract under § 8458, even if it were payable to the husband. *A fortiori,* it is exempted, where, as here, the husband can designate the recipient of the monthly payments, and in the event of his mental incapacity they go absolutely to his children, as beneficiary of the policy.

(C) In the Metropolitan Life's 1927 Rate Book (pp. 5, 16) the annual premium rate of the particular form of policy issued to Legg is given for his age (39 years); and is described as "whole Life" and "Disability Provision (Waiver of Premium and Monthly Annuity)".

If the present controversy (instead of being between Legg and his creditors) had been between Legg and the Metropolitan Life, surely every court would hold that the Metropolitan Life had sold to Legg a "life" policy with a "disability" *Annuity* provision. If, for some reason, it had been to the interest of the Metropolitan Life to deny that it had issued to Legg a "life" policy, with an *"annuity"* contract as a part thereof, would any court have listened to such a contention by the insurance company, in view of the description which it gave in its literature of the thing it was selling to Legg?

Such description is not an isolated one; but in the same Rate Book under the heading "Premium Rates for Total and Permanent Disability", the Metropolitan Life repeatedly described the monthly "disability" income pro-

vided for in the Legg policy, as an "Annuity", as follows:

> "In considering the issuance of any Waiver of Premium and Monthly *Annuity* Disability Benefit . . . the maximum amount of Disability Waiver of Premium and Monthly *Annuity* Benefit . . . regular Waiver of Premium and Monthly *Annuity* provision with omission of matter covering payment of the *Annuity* (p. 14 A)"
>
> "Disability Benefits: Waiver of Premium and Monthly *Annuity*" (p. 14 B).
>
> "Waiver of Premium Granted only when Insured has full amount allowed on *Annuity Benefit*" (p. 14 B).
>
> "Ordinary and Intermediate—This Disability *Annuity* Provision will not be issued . . . unless . . ." (p. 15).
>
> "Disability Provision (Waiver of Premium and Monthly Annuity)" as applied to many varieties of life policies (pp. 16-19).
>
> "If total and permanent disability occurs before age 60, a monthly *annuity* of $10 for each $1000 face amount . . . will be paid . . . Where disability occurs after age 60, no *annuity* is payable" (p. 36).
>
> "Total and Permanent Disability (Waiver or Premium and Annuity) all acceptable ages $25,000" (p. 64).

Later editions of the Metropolitan Life's Rate Book re-emphasize the same point for *hundreds* of different *life* policies, as, for example (1930 Ed.), the statements:

> "No *disability annuity* granted on $500 policies . . . " (Formula for hundreds of policies repeated *thirty-six* times pp. 313, 349; repeated *twenty* times pp. 359-380; repeated *sixteen* times pp. 389-404.
>
> "No *disability annuity* granted with this policy (pp. 349-354, 381-388).
>
> "Deferred Annuities. This disability benefit provides, in the case of male lives, that if total and permanent disability occurs before the beginning of deferred annuity payments, future premiums will be waived and the Company will pay a monthly income of $6 for each $10 of deferred annuity called for by the contract, *such disability annuity* being payable during disability up to the time the deferred annuity payments begin and no longer" (p. 21).

Under the heading of "Total and Permanent Disability Provision", there are repeated references to the "disability" income payments as being a "monthly *annuity*" (pp. 20-21).

This demonstrates that the Metropolitan Life, in its technical literature describing and offering for sale the Legg and similar policies, described the "disability" benefit as a "monthly *annuity*".

Text-writers' definitions of an "annuity" exactly cover such payments as the "disability" income in the Legg policy (3 C. J. pp. 199, 200, 205, 206; Clark's "Outlines for Review of the Fundamental Principles of Law", p. 256 (1923); *Cf. Anderson* v. *Hammond,* 2 Lea (Tenn.) 281; *Morgan* v. *Pope,* 7 Cold. (Tenn.) 541); and payments of this very nature have been held to constitute an annuity (*New York Life* v. *Majet,* (Miss.) 161 So. 156).

It is unnecessary to consider the refinements and distinctions between annuities certain, contingent annuities, life annuities, deferred annuities, immediate annuities, survivorship annuities, annuities for life contingent upon continued disability, etc.

The point is that Tenn. Code, § 8458 intended to cover *all kinds of annuities,* when it provided that the net amount payable under *any* annuity contract upon the life of any person should be exempt from his creditors, if the annuity contract was made for the benefit of his children, as was the case in the Legg policy.

The monthly "disability" income payable during the continuance of Legg's disability, is exempt by the laws of Tennessee from the claims of his creditors, both as money "arising" under a life policy (§ 8456); and especially as an amount "payable" under an **"annuity"** contract for the benefit of his children (§ 8458).*

THIRD POINT

Even if the "Disability" feature were neither "Life" insurance nor an "Annuity" (and consequently, non-exempt under Tennessee Laws), still it is certainly an "Insurance Policy" under § 70(a)(5) of the Bankruptcy Act; and, therefore, either,

(a) The "Disability" feature has no Cash Surrender Value whatever, and does not pass to the Trustee; or

(b) Its Cash Surrender Value (if any) should be ascertained, and Legg given an opportunity to pay the same to the Trustee, and then to hold the "Disability" contract (and the future payments thereunder) "free from the claims of the creditors".

Even if the Legg "Disability" contract is *non*-exempt under the Tennessee laws, still it is surely an "insurance policy" under the Bankruptcy Act, § 70(a)(5).

§ 70(a) provides that:

> "When any bankrupt shall have *any insurance policy* which has a cash surrender value . . ."

* Legg's children are not only named as the beneficiaries (R. 6 G); but, in the event of Legg's mental incapacity, the monthly income must be paid to the children (R. 6 C).

Congress did not limit that provision to *"life"* insurance; but it used the broader term *"any insurance* policy". The language, therefore, certainly embraces the "Disability" contract, even if it be considered separate and distinct from the "life" insurance feature; because the Disability contract is certainly a policy insuring against Disability.

This Court has definitely decided the true meaning of the Bankruptcy Act § 70(a) to be that any property (insurance or otherwise) which *is exempt* under the State laws, does not pass to the Trustee; but that as to any insurance that is *non*-exempt under State laws, the entire field as to such *non*-exempt insurance is embraced in the insurance clause of § 70(a), with the following effect:

(*a*) If the insurance has *no* Cash Surrender Value, it remains the property of the bankrupt, and does not pass to the Trustee at all;

(*b*) If it has a Cash Surrender Value, then the bankrupt, by paying such value to the Trustee, can retain the insurance, free from the claims of his creditors.

In view of that construction, is it not plain that the words "any insurance policy", used in § 70(a) includes not only old fashioned life insurance policies, but was intended to include any kind of contract which undertakes to protect an individual against death, disability, accident, sickness, ill health, or, against too long a life itself.*

* The reason a person buys a policy of ordinary old fashioned life insurance is that he fears he will *die*. The reason a person buys such a policy with an incidental Disability feature is that he fears he may *live* many years after losing his earning power, and wants a monetary protection for himself during his life.

If the C. C. A. meant that the words "any insurance policy" refer only to a *life* insurance policy, and that a Disability policy *is not* a "life" policy, we can only reply that such a construction would do great violence to the Congressional language. If Congress had intended to limit § 70(a) to a "life" insurance policy, it was easy to say "any *life* insurance policy". The fact that Congress did *not* say *"life* insurance policy", but said *"any insurance* policy", demonstrates that it did not intend to confine § 70(a) to a *"life"* insurance policy, but meant § 70(a) to include something more—perhaps a great deal more.*

The C. C. A. did not even consider the point that, (upon its own assumption that the "Disability" contract was separate and distinct from the "life" contract), nevertheless, the "Disability" contract was "an insurance policy" within the meaning of § 70(a); that it had no Cash Surrender Value; and, hence, such "Disability" contract remained in the bankrupt and did not pass to the Trustee (*Burlingham* v. *Crouse,* 228 U. S. 459, 469, and cases there cited).

In *Burlingham* v. *Crouse,* this Court definitely settled that a policy which had *no* Cash Surrender Value, did not pass to the Trustee. Therefore, even if the Legg

* The Trustee in Bankruptcy may contend that *Burlingham* v. *Crouse* (and the cases following it) only dealt with conceded "life" insurance policies, and did not relate to a *non*-life insurance policy, such as the C. C. A. held the Legg Disability contract to be. To such a contention, we respond: It is true that the cases heretofore arising have dealt with "life" policies; but as just shown, pp. 37-39, *supra,* § 70(a) is not limited to "life" insurance, but is all embracing, covering *"any insurance policy"*, which is broad enough to cover a policy *insuring against total and permanent disability.*

"Disability" contract is *non*-exempt under the Tennessee statute, nevertheless, as it confessedly has *no* Cash Surrender Value, **it did not pass to the Trustee.**

We submit:

I. *The Disability contract (as separate and distinct from the "life" policy) has no Cash Surrender Value whatever; and it did not pass to the Trustee in Bankruptcy* [§ 70(a) *as construed in* Burlingham v. Crouse].

1. The Disability contract does not contain a single word about any Cash Surrender Value (R. 6 C). *Burlingham* v. *Crouse,* 228 U. S. 459, held that if an insurance policy had *no* Cash Surrender Value, it did not pass to the Trustee. Therefore, as there was no Cash Surrender Value to the Disability contract as a separate entity, it did not pass to the Trustee, but remained the property of the bankrupt; and the C. C. A. erred in giving the "Disability" income subsequently arising thereunder to the Trustee (R. 10, 23).

2. If it be urged that the Legg policy does contain a Table of "Cash Surrender Values",* we reply that such Cash Surrender Value was contained in, and referred solely to, the alleged separate and distinct "*life*" contract. The Legg policy can not be *split up* into two alleged separate "life" and "disability" contracts, in order to deprive Legg of the benefits of the Tennessee statute exempting "life" insurance from his creditors, and then re-combined

* At the time of the filing of the petition in bankruptcy the Cash Surrender Value was quite insignificant in amount, *i. e.,* $1,585, *minus* the $1,400 indebtedness (R. 6 B, 17).

into *one* contract so as to read into the "disability" contract a Cash Surrender Value, *which appears only in the "life" contract.*

If Legg's Disability contract is not *"life"* insurance, but is distinct and separate Disability insurance, then, he insists that the outlawed Disability contract *contains no provision for a Cash Surrender Value;* and, therefore, does not go to the Trustee (*Burlingham* v *Crouse,* 228 U. S. 459).

3. The confusion in the C. C. A.'s decision lies in this: In order to give the future Disability payments to the Trustee, the C. C. A. first held that the Disability contract was separate and distinct from the "life" contract, and, therefore, was *non*-exempt under the Tennessee statute exempting "life" insurance. But even that, standing alone, would not be sufficient to give the Disability income to the Trustee, as § 70(a) still permitted Legg to hold on to the policy *unless* it had a Cash Surrender Value (*Burlingham* v. *Crouse*).

Therefore, the C. C. A. was logically compelled to hold, either (1) that the Disability contract *had* a Cash Surrender Value, or (2) that the Disability contract was *not* even an "insurance policy" within the meaning of § 70(a). The C. C. A. did not explicitly hold either (1) or (2), so we must examine both alternatives:

(1) The Trustee in Bankruptcy *"set aside* [to Legg] said life insurance policy and the *cash surrender value* thereof as exempt" (R. 3), which was approved and confirmed by the Referee (R. 7, 10); District Court (R. 14), and C. C. A. (R. 25). The cash surrender value so

set aside to Legg was the full amount given in the Table *minus* the outstanding indebtedness on the policy (R. 3, 7, 17).

That was a recognition of the fact that the Disability contract, as a separate entity, had *no* Cash Surrender Value; for *if* it had a Cash Surrender Value, how much was it?—as the amount thereof would have to be subtracted from the Cash Surrender Value given in the Table before the latter could be set aside to Legg.

There is not a syllable in the policy to indicate that the alleged Disability contract has any Cash Surrender Value whatever.

As there was no Cash Surrender Value, the Trustee was not entitled to the Disability contract, or any future benefits thereof, as assets of the estate; and the bankrupt, Legg, was entitled to hold it as his own (Bankruptcy Act § 70(a); *Burlingham* v. *Crouse*).

(2) The other logical alternative (2) [which the C. C. A. did not rely on], *i. e.*, that "any insurance policy" in § 70(a) means any *life* insurance policy, is necessarily the only logical basis of its decision. We have just fully considered that at pp. 37-39, *supra*, and will not repeat the argument.

The C. C. A.'s argument seems to be that the Legg Disability contract is not a "life" policy but is a separate and distinct kind of indemnity contract with no Cash Surrender Value and not included in the insurance clause of § 70(a)(5); that it is *non*-exempt under the Tennessee statute, and consequently *non*-exempt under the Bank-

ruptcy Act; but that it is nevertheless a species of property which automatically passed to the Trustee in Bankruptcy, under the Bankruptcy Act §70(a)(1)(3)(5)(6). To that very complicated contention, we respond that it would do violence to the Congressional intention, as construed by this Court in *Holden* v. *Stratton,* 198 U. S. 202; *Hiscock* v. *Mertens,* 205 U. S. 202; *Burlingham* v. *Crouse,* 228 U. S. 459; *Everett* v. *Judson,* 228 U. S. 474; *Andrews* v. *Partridge,* 228 U. S. 479; and *Local Loan Co.* v. *Hunt,* 292, U. S. 234, namely, that the unfortunate debtor who surrendered all his property should have a new opportunity in life, and entitled to retain his *insurance* with its future protective and other qualities, subject only to paying to the Trustee the Cash Surrender Value, if any, of such policies as might be *non*-exempt under the State law.

In *Burlingham* v. *Crouse,* this Court expressed the idea we are trying to convey, when it said:

> "We think it was the purpose of Congress to pass to the trustee that sum which was available to the bankrupt at the time of bankruptcy *as a cash asset,* **otherwise to leave to the insured the benefit of his life insurance . . .** As we have construed the statute, its purpose was to vest the surrender value in the Trustee for the benefit of the creditors, **and not otherwise to limit the bankrupt in dealing with his policy."**

At the time of the bankruptcy, the Disability contract had no cash value. No sum was then available to Legg. Therefore, the Disability contract did not go to the Trustee; but Congress intended to leave to Legg the benefit of that insurance.

II. *If non-exempt, the Disability Contract's Cash Surrender Value (if any) should be ascertained; then Legg should be given an opportunity to pay such value to the Trustee, and thereafter to hold the Disability contract and the future income thereunder, free from the claims of his creditors.*

If the phrase "any insurance policy" [§ 70(a)] includes the Disability contract, then, as heretofore shown, if there is *no* Cash Surrender Value, the Trustee takes nothing, and Legg gets the Disability contract.

On the other hand, if the Disability contract *has* a Cash Surrender Value, then, by the plain words of § 70(a)(5), Legg should be given an opportunity to pay such value to the Trustee, and thereafter "to hold, own and carry such policy free from the claims of the creditors".*

FOURTH POINT

Any future "Disability" payments to Legg are in the nature of future earnings, or after-acquired property, neither of which passed to the Trustee upon the filing of the petition in bankruptcy.

I. CONSIDERED AS "FUTURE EARNINGS"

The *future* "disability" payments to Legg solely because of his *continuing* total and permanent disability, ought not

---

* The Legg policy was never payable to Legg himself. It was first payable to his wife as beneficiary. Later, he changed the beneficiary to his children, reserving the right to change the beneficiary thereafter.

to go (as they severally fall due) to his creditors, who have already received *all the property which he owned at the time of bankruptcy.*

Legg ought to be able, after the bankruptcy, to receive, or have his children receive, the future "Disability" payments, upon the same theory that, in *Local Loan Co.* v. *Hunt,* 292 U. S. 234, it was held that the *future earnings* of a bankrupt after the adjudication, belonged to him, free of any pre-existing assignment of such future earnings to secure a pre-existing debt.

The Metropolitan Life's policy provides for the Disability payments here in controversy, if Legg is so totally and permanently disabled that he is

> "*prevented thereby* from engaging in any occupation and performing any work for compensation or profit" (R. 6 C).

These future Disability payments to Legg are in lieu of the earnings which he could make if he were not physically helpless. Therefore, Legg, in his *helpless* condition, should receive, at the hands of his Court, the same consideration with respect to the *future Disability payments,* as was accorded to the *able-bodied* bankrupt in *Local Loan Co.* v. *Hunt,* in respect of his *future earnings.*

In *Local Loan Co.* v. *Hunt,* the bankrupt, at the time of bankruptcy, possessed his *potential earning power;* and yet it was held that the *future results* of such earning power did *not* go to the creditors. So here, Legg's present potential right to receive future Disability payments, ought not to go to the creditors, who have already received everything of value which Legg owned at the

time of the bankruptcy.* The purpose of the Bankruptcy Act was to give to an *able-bodied* bankrupt a chance for the future. *A fortiori,* it must have intended to give a totally and *permanently disabled* bankrupt, the right to receive something accruing to him in the future, which was not *in esse* at the time of the bankruptcy.

The effect of the C. C. A.'s decision is to give Legg a vested remainder in his own hopeless disability; to treat that hopeless *disability* as an asset which passed to the Trustee; and to use it as a means to give to his creditors the future benefits which the insurance company wishes to pay to Legg on account of his helpless condition.

Legg's *disability* is not such a *cash asset* as the Bankruptcy Act passed to the Trustee. Legg's *disability* is analogous to the ordinary bankrupt's potential *ability to earn a salary in the future.* Such *potential ability* and such *future* earnings, when earned, are not assets of the estate. Neither are the future disability payments to Legg assets of the estate.

The Bankruptcy Act contemplated that when a bankrupt gave up all his cash assets to his creditors, he might

* This Court has construed the Bankruptcy Act to mean that when a bankrupt surrenders for distribution the property which he owned *"at the time of bankruptcy"*, including "whatever sum was available to the bankrupt at the time of bankruptcy *as cash assets* to be realized on surrender of the policy", he should receive "a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt"; and that the power of the bankrupt "to earn a living for himself and those dependent upon him is in the nature of a personal liberty quite as much if not more than it is a property right." *Frederick* v. *Fidelity Mutual,* 256 U. S. 395, 397; *Local Loan Co.* v. *Hunt,* 292 U. S. 234, 244, 245; *Louisville Bank* v. *Radford,* 295 U. S. 555.

begin life anew, with such ability as he may have. Legg, *totally and permanently disabled,* ought not to be placed on a worse basis than an *able bodied* bankrupt whose ability to earn a future living for himself and his family, is unimpaired. The Bankruptcy Act does not take away from the able bodied bankrupt any of that ability or future earnings. It certainly ought not to take away from disabled Legg the future income which he will receive solely on account of such disability.

If Legg recovers from his disability, the Disability payments cease (R. 6 C); and his ability to earn is restored. But his future earnings do not go to his creditors (*Local Loan Co. v. Hunt*). *A fortiori* the Disability payments should not go to them.

II. CONSIDERED AS "AFTER-ACQUIRED" PROPERTY

Future "Disability" payments are akin to "after-acquired property", because, in order for Legg to receive the future "Disability" payments as they shall severally fall due, the policy must be kept in force by the annual waiver of premiums through his continued disability; and in addition (R. 6 C):

(1) Legg must be alive;

(2) Legg must be totally and permanently disabled, so as to be prevented thereby from engaging in any occupation or performing any work for compensation or profit;

(3) Legg must annually prove to the company's satisfaction that he is so disabled.

The occurrence of Legg's total and permanent disability before his bankruptcy did not create a *vested property right in his disability,* to which his Trustee in Bankruptcy succeeded. It is not the occurrence of the disability, but its continuance and the performance of certain conditions by Legg during such continuance (p. 47, *supra*) that gives rise to his right to receive the disability payments.

Strictly speaking, Legg does not have a single right or cause of action for the disability payments, but only a succession of future rights and causes of action as each periodical payment accrues and remains unpaid (Cf. *Mobley* v. *New York Life,* 74 F. (2d) 588, cert. denied; *Porter* v. *Cas. Co. of America,* 120 N. Y. Supp. 71).

The judgment below should be reversed.

HENRY ROBERTS,
J. K. BROWN,
WM. MARSHALL BULLITT,
Counsel for Petitioner.

5 November, 1935.

[See Appendix for Relevant Statutes; Criticism of *In re Kern,* 8 F. Supp. 246; and State Statutes.]

APPENDIX

I.

Code of Tenn. (1932)

Sec. 8456. *Insurance on husband's life, effected by himself goes to wife and children.* Any life insurance effected by a husband on his own life shall, in case of his death, inure to the benefit of his widow and children; and the money thence arising shall be divided between them according to the statutes of distribution, without being in any manner subject to the debts of the husband.

Sec. 8458. *Life insurance or annuity for or assigned the wife or children, or dependent relatives is exempt from claims of creditors.* The net amount payable under any policy of life insurance or under any annuity contract upon the life of any person [made for the benefit of, or assigned to, the wife and/or children, or dependent relatives of such person,] shall be exempt from all claims of the creditors of such person arising out of or based upon any obligation created after the effective date of this Code, whether or not the right to change the named beneficiary is reserved by or permitted to such person. (1925, ch. 113, Modified.)

Bankruptcy Act of July 1, 1898, as amended:

Sec. 6. The provisions of this title shall not affect the allowance to bankrupts of the exemptions which are prescribed by the State laws in force at the time of the filing of the petition in the State wherein they have had their domicile for the six months or the greater portion thereof immediately preceding the filing of the petition. (July 1, 1898, c. 541, Sec. 6, 30 Stat. 548.)

Sec. 70 (*a*) The trustee of the estate of a bankrupt, upon his appointment and qualification, and his successor or successors, if he shall have one or more, upon his or their appointment and qualification, shall in turn be vested by

operation of law with the title of the bankrupt, as of the date he was adjudged a bankrupt, except in so far as it is to property which is exempt, to all (1) documents relating to his property; (2) interests in patents, patent rights, copyrights, and trade-marks; (3) powers which he might have exercised for his own benefit, but not those which he might have exercised for some other person; (4) property transferred by him in fraud of his creditors; (5) property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him. When any bankrupt shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives, he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the trustee as assets; and (6) rights of action arising upon contracts or from the unlawful taking or detention of, or injury to, his property.

II.

Criticism of In re Kern, 8 F. Supp. 246.

In *Ruvinsky* v. *Shonberg,* N. Y. Law Journal Sept. 10, 1935, it was held that where a man became disabled *before* bankruptcy, the "disability" income that became due *after* bankruptcy went to the disabled bankrupt, and *not* to the Trustee in Bankruptcy. The Court said:

> "The trustee cites and seemingly relies upon *In re Kern* (8 Fed. Supp. 246). This is an opinion by the District Court of the Southern District of New York. The case is in point and it does support the trustee's contention. The opinion, however, on this point is very brief and merely says (p. 249): 'Whatever the times of payment the right of the bankrupt to payments under the policies had been acquired long prior to bankruptcy and was a vested right at the time of petition filed.' For this statement three cases are cited. The cases, however,

seem not in point, as we shall shortly see, and the statement quoted that the bankrupt had a 'vested right' to the subsequent disability payments at the time of the adjudication seems contrary to the facts.

One of the cited cases is *In re Baudouine* (96 Fed., 536). This dealt with the income of a trust fund which had been left to the bankrupt. The provision of the statute that was applicable made the surplus of such income liable to the claims of creditors. The court held that the bankrupt's interest in the income was a vested one and that (p. 538): 'it was a present property right existing at the time when the adjudication was made, although the amounts due under it become payable to him from time to time afterwards.' There is no such interest in our case.

Another cited case is *In re Wright* (157 Fed., 544). This is a decision by the Circuit Court of Appeals in the Second Circuit. There the bankrupt had been managing agent for a life insurance company under a contract which had not expired and which entitled him to an interest in renewal premiums, when collected, on policies previously written, so long as the contract was in force, subject to the right of the company to terminate that interest, and with the proviso that upon his death his widow and estate were entitled to receive the interest for a stated period. The court held that that interest was property which the bankrupt could have transferred, and therefore it passed to his trustee. Excepting the premise, we agree with the conclusion, but in our case the claim to future payments was not property.

And the other cited case is *Fuller* v. *N. Y. Fire Insurance Co.* (184 Mass. 12). This held that the title to property remains in the bankrupt after the adjudication and up to the time of the appointment of a trustee, and hence, that where the property was destroyed by fire during that interval the trustee upon his appointment could enforce the policies. This holding is predicated upon the fact that the bankrupt had title until the trustee was appointed, and hence when the fire occurred the bankrupt acquired a cause of action on the policies which passed to the trustee upon his subsequent appointment. There is nothing in this holding that in any way aids the trustee's contention in our case."

III.

List of State Statutes recognizing that "disability" and "double indemnity" benefits may be in "life" policies.

Arizona	Revised Code 1928. Sec. 1853
California	Political Code. Sec. 594 General Laws 1931 Vol. 2. Act 3736 Sec. 11
Connecticut	Gen. Stats. 1930 Chap. 221 Sec. 4228.
District of Columbia	Act of Congress No. 436 of 1934, Chap. 5 Sec. 12
Idaho	Code Anno. 1932. Sec. 40-1913
Illinois	Smith & Hurd, Revised Stats. Chap. 73 Laws 1933, Sec. 230 & 373.
Indiana	Burns Anno. Statutes (1926) Sec. 8918.
Iowa	Code 1931 Sec. 8672 and 8673
Kansas	Supplement to Revised Stats. Chap. 231 of 1927 Sec. 40-401
Kentucky	Carroll's Kentucky Statutes (1922) Sec. 644
Maryland	Anno. Code 1924, Art. 48A, Sec. 16.
Massachusetts	General Laws of 1932, Chap. 175 Sec. 24
Michigan	Comp. Laws 1929. Sec. 12449.
Minnesota	Mason's Minn. Statutes (1927) Sec. 3426 As amended by Chap. 74 of Laws of 1935.
Missouri	Revised Statutes of 1929. Sec. 5690 & 5893
Nebraska	Comp. Stats. 1929, Sec. 44-606.
New Hampshire	Public Laws of 1926, Chap. 281, Sec. 23
New Jersey	Supplement to Compiled Statutes of 1930, Sec. 99-2.
New York	Insurance Law, McKinney's Con. Laws, Book 27, Sec. 107
North Carolina	Code 1931, Sec. 6489.
Ohio	General Code, Sec. 9385.
Oklahoma	Compiled Statues of 1931, Sec. 10456.
Oregon	Code 1930, Sec. 46-806 and 46-122 (5)
Pennsylvania	1928 Supplement to Penna. Stats. Sec. 12490B—629B.
South Dakota	Compiled Laws of 1929, Sec. 9346L.
Vermont	Public Laws (1933) Sec. 7084.
Virginia	Code of 1930, Sec. 4319.
Washington	Revised Stats. 1931, Sec. 7242A.

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No. 54.

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In the Supreme Court of the United States

OCTOBER TERM, 1935

GEORGE EVERETT LEGG,
Petitioner,

v.

E. ST. JOHN,
Trustee.

Certiorari to C. C. A. Sixth Circuit.

BRIEF FOR TRUSTEE.

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The writ of certiorari having been granted we take up the discussion of the two determinative questions:

1. Is the Health Indemnity Supplementary contract an "insurance policy" within the meaning of the Bankrupt law, and do the indemnity monthly payments represent assets of the bankrupt's estate to be administered by the bankrupt court?

2. Are the indemnity payments free from the claims of creditors under the Tennessee exemption statutes?

Health Indemnity is not Insurance and is separate and distinct from the Life Policy.

The applicable Federal bankruptcy statute is quoted in the opinion of the Circuit Court of Appeals, (R. 23) as follows:

Section 110 (a) (5), Title 11, U. S. C:

> "* * * When any bankrupt shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representative, he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings; otherwise the policy shall pass to the trustee as assets."

Every policy of insurance on the life of a citizen of Tennessee shall be construed as a Tennessee contract.

Code, 6086.

At the time G. E. Legg, filed his petition in bankruptcy there was in force a policy of insurance on his life in the Metropolitan Life Insurance Company, payable to his wife. As a part of the same policy there was a supplementary contract in which the Insurance Company, in consideration of an additional annual premium of $49.39 agreed, in case the insured became totally and permanently disabled, to pay him a monthly income of $10.00 for each $1,000.00 of insurance under said policy, until the insured is sixty years old. This was in addition to the life policy. (R. 60.)

Legg became totally disabled, and was himself being paid monthly sums of $174.50, when creditors attached

the money in the hands of the Insurance Company. He then filed his petition in bankruptcy.

The bankrupt law is the same as at the time of the decision of the case of Burlingham v. Crouse, decided more than twenty years ago. (228 U. S., 467.)

The bankruptcy statute had reference to life insurance. Congress could not have had in mind a health indemnity contract, such as is here involved, because such contracts were not written at that time. The Court may in construing the statute recur to the history of the times when it was passed in order to ascertain the reason as well as the meaning of particular provisions in it.

Mobile & Ohio v. *Tennessee*, 153, U. S. 502. (38: 799); 25 R. C. L., 1035.

In each of the eight reasons given in the petition for the writ of certiorari, except the seventh which is without any reason, it is urged that the "Supplementary contract" which provides for health indemnity is part of the life insurance policy, and, therefore, within the provision of the bankrupt law. (Brief, 3; B.)

That this supplementary contract is, for certain named purposes a part of the life policy, we admit. But there should be no dispute as to how far the two contracts are to be treated as one agreement. That is plainly provided for, as found by the learned Court of Appeals, in the "Supplementary Contract", which concludes:

> "This Supplementary Contract shall be deemed to be a part of the above numbered Policy and the provisions of said Policy concerning declarations and representations by the insured, restrictions, payment of premiums, change of beneficiary, and assignment are hereby referred to and by such reference made

a part hereof. No other provisions of said Policy shall be held or deemed to be a part hereof, except (a) The provision of the said Policy as to incontestability shall apply hereto, but shall not preclude the Company from requiring as a condition to recovery hereunder, due proof of such total and permanent disability as entitled him to the benefits hereof. (b) The provision of said Policy as to reinstatement shall apply hereto, except that this Supplementary Contract shall not be reinstated unless said Policy is in force and no premium is in default thereon, or unless said Policy is reinstated at the time of reinstatement of this Supplementary Contract." (R. 6C.)

The indemnity contract is to be deemed as part of the Policy only as to "declarations and representations of the insured, restrictions, payment of premiums, change of beneficiary, and assignment," and nothing else except the matters named in subsections (a) and (b), not relevant to any question here.

We mention some of the things that show that the Policy of insurance and the Supplementary agreement as to health indemnity are separate and distinct contracts:

1. The policy is signed by the President and Secretary of the Insurance Company. (R. 6A.)

The supplementary contract is also signed by them. (R. 6C.)

If but one contract the signing one time would have been sufficient. The Insurance Company must have understood that there were two contracts.

2. The premiums on the life policy and on the health indemnity are in separate and different amounts.

3. The indemnity feature may be cancelled by the insured without affecting the life policy. Note this provision:

> "This Supplementary Contract may be cancelled by the insured * * * by written request to the Company." (R. 6C.)

4. The life policy is payable to Beatrice A. Legg, on the death of the insured. (R. 6A.)

The health indemnity is payable "to the insured, or a person designated by him for the purpose", in monthly payments in case to total disability. (R. 6C, 2.)

It is only when the disability is "accompanied by mental incapacity" that the indemnity payments are to be made to "the beneficiary of record under said Policy." (R. 6C, 2.)

That is if the insured becomes totally disabled by reason of injury or disease, and the disability is accompanied with mental incapacity, so that the insured is not competent to receive the indemnity payments or to designate a person to receive them for him, then and then only is the beneficiary named in the Policy to be paid the indemnity monthly payments.

5. The hazard of the two contracts are different. The life policy is payable only on the death of the insured. The indemnity, with a greatly reduced premium, is payable in case of total disability and then only during the time of such disability. In any event the disability payments cease when the insured reaches the age of sixty years. The Tennessee Court of Appeals said:

> "At common law there were no exemptions from execution. Accordingly the general rule is that every

species of property is liable for the payment of debts; and only those articles specified by statute can be held to be exempt. 11 R. C. L., p. 489.

It is obvious that our statutes which exempt life insurance effected by a husband on his own life from execution or attachment for the debts of the insured (Shannon's Code, sections 4231 and 4233) have no application to the instant case, and we are not aware of any statute of this State which provides or attempts to provide, for such an exemption as that here claimed by the plaintiff in error."

Cravens v. *Robbins,* 8 Tenn. App. 437.

The "Supplementary Contract" of health indemnity is not an "insurance policy" within the meaning of the bankrupt law. The precise question has been decided by the highest court in Mississippi. The insurance policy and the supplementary contract for health indemnity were like the ones here involved. The Court said:

"In the case at bar, the money involved is in no proper sense the proceeds of a life insurance policy. It is true that it arises out of one of the provisions of a policy of insurance on the life of the appellee, but this provision is a contract of indemnity wholly separate from the contract to pay a fixed sum upon the death of insured. The statute provides that the proceeds of a life insurance policy payable to the executor, or administrator, of the insured shall inure to the heirs or legatees freed from all liability for the debts of the decedent. In the contract of insurance upon which the appellee recovered, the life insurance is payable to the executor, administrator, or assigns of the decedent, while the disability benefit is payable to the insured."

Chattanooga Pipe Works v. *Dumler,* 62 A. L. R. 1003. 153 Miss., 276.

Such was the holding of the Tennessee Court of Appeals just quoted.

The logic of the holdings of this Court lead to the same result. In Burlingham v. Crouse, a leading case on the subject of exemptions of life insurance under the bankruptcy laws, it was said:

> "It is the twofold purpose of the bankruptcy act to convert the estate of the bankrupt into cash and distribute it among creditors, and then to give the bankrupt a fresh start with such exemptions and rights as the statute left untouched. In the light of this policy the act must be construed. We think it was the purpose of Congress to pass to the trustee that sum which was available to the bankrupt at the time of bankruptcy as a cash asset; otherwise to leave to the insured the benefit of his life insurance." 228 U.. 473. (57: 927.)

When the indemnity payments here involved are sequestered and used to pay the bankrupt's debts it will not affect in any way his life insurance for the benefit of his wife and children. There will be no more premiums to pay on the life policy unless Legg should be restored to health. The health indemnity was a personal asset of Legg long before he filed his petition in bankruptcy, and passed to the trustee as a cash asset, leaving to the bankrupt's wife and children the benefit of his life insurance. This is, as said by this Court, the way Congress intended it should be.

It is said and many times repeated in Appellant's Brief that the life policy and the indemnity contract are but one contract and inseparable. In proof of this the paragraph in the Supplementary contract commencing "This Supplementary Contract shall be deemed to be a part of the above numbered Policy" etc., naming certain things in the Policy that are to be read into the

contract, is quoted. (Brief, 13.) The Brief omits the last and controlling sentence in the paragraph as follows:

> "No other provision of said Policy shall be held or deemed to be a part hereof except"—(setting out the two provisions, a and b, not here involved). (R. 6C.)

The Supplementary Contract shows affirmatively that it was a part of the insurance policy only for a limited and definite purpose, and that the two were necessarily separable.

Supplementary Indemnity Contract is not an Annuity.

If, however, the Court should find that the Indemnity feature was an insurance policy within the meaning of the bankrupt law, it would not affect the result. The payments thereunder represent the "cash surrender value" of such policy, which are subject to the payment of the bankrupt's debts by the express provision of the bankrupt law.

The contention of appellants is that the Indemnity payments are exempt under the following Tennessee statute:

> "The net amount payable under any policy of life insurance or under any annuity contract upon the life of any person made for the benefit of, or assigned to, the wife and/or children, or dependent relatives of such person, shall be exempt from all claims of the creditors of such person arising out of or based upon any obligation created after the effective date of this Code, whether or not the right to change the named beneficiary is reserved by or permitted to such person." (Code, 8458; R. 23.)

This statute has no application here because the Health indemnity contract was not "made for the benefit of, or assigned to", any of the relatives named in the statute. The contract was to "pay to the insured, or a person designated by him for that purpose". (R. 6C, 2.) No person was so designated.

The question of any annuity contract is irrelevant. We may concede that it is an annuity and the same result would obtain. If an annuity it does not come within the reach of the exemption statute just quoted. The statute applies only to "any annuity contract upon the life of any person made for the benefit of, or assigned to the wife or children or dependent relatives of such person."

The contract was not made for the benefit of any of the dependent relatives designated by the statute to receive it. It was made for the benefit of the insured alone, and the exemption does not apply to him.

Sparkman v. *Chandler*, 162 Tenn., 614.

Such is the common law.

Bank v. *Clement*, 256 U. S. 126. (65: 858).

This Court will willingly follow the construction given to the Tennessee exemption statute by the highest court in that state. An insolvent debtor bequeathed a life insurance policy, payable to his estate, to his niece. He was survived by his widow and children but they made no claim to the insurance. For the reason that the niece was not one of the next kin named in the exemption statute, not being a "dependent" relative, it was held that the proceeds of the insurance policy were liable

for the payment of his debts in preference to the bequest to the niece.

Sparkman-Thompson v. *Chandler*, 162 Tenn., 614.

It was further held in that case that an insurance policy owned absolutely by the insured may not be bequeathed or devised by way of gift to others not named in the statute so as to defeat the payment of his just debts. (Page, 620.)

That reasoning applies here. The indemnity policy belonged absolutely to the bankrupt, Legg. It was made payable to him and was never assigned to any one else. He had personally been collecting and using the indemnity payments for two or three years.

We think Prof. Eager is wrong, whether "tragically" or otherwise, in saying that the Court of Appeals was in error "in holding that the monthly payments to which a discharged bankrupt is entitled by reason of total disability, under an insurance policy which had no cash surrender value * * * belong to the trustee in bankruptcy." (Appellant's Brief, 5.)

There is error in almost every line: (1) In supposing that these monthly payments were under an insurance policy; it was an indemnity health policy, separate from and supplemental to the insurance policy. (2) In saying that the policy had no cash surrender value. It had a cash surrender value of $174.52 every month—less $40.00 monthly exemption under statute. Legg was 42 years old at the time he became totally disabled. (Appellant's Brief, 1 and 2.) The Supplemental indemnity

feature limits payments thereunder to the age of 60 years. A total cash surrender value, if required, could be ascertained (a) by a simple calculation of the amount of these payments for 18 years, less six per cent; or (b) the interest in Legg's indemnity, less $40.00 per month exemption, could be sold as a whole, by order of the bankrupt court, and the proceeds applied to the payment of his debts. This would test whether or not the indemnity had a cash surrender value. (c) Or the case could be held in the bankruptcy court until the monthly payments liquidated the debt.

The U. S. Circuit Court of Appeals, First Circuit, held that a trustee in bankruptcy could not have an annuity contract, procured by the bankrupt by the fraudulent use of funds, set aside and the funds reached, because the Insurance Company had no notice of the source of the bankrupt's funds. But the Court said:

> "The contingent right of the insured, like the statutory right to seize and hold and sell remainder and contingent interests in real estate, is doubtless something that the trustee may seize and hold for the benefit of the creditors, or doubtless he may waive it altogether under circumstances which justify it."

Mutual Life Ins. Co. v. *Smith,* 184 Fed. 1.

The bill was dismissed "without prejudice to any right the trustee may have to claim whatever beneficial interest the bankrupt has, or may hereafter have, under the insurance contracts described in the bill."

The same principle and the same reasoning will be found in Suskin & Berry v. Rumley, Trustee, by the Circuit Court of Appeals, 4th Circuit. 37 Fed. (2nd) 304.

There is another reason why, under the bankrupt law, the interest in the indemnity monthly payments to Legg may be reached by creditors, independent of any question of insurance.

By section 70a (5) it is provided that the trustee in bankruptcy shall be vested with the title to "property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him."

1. The bankrupt could have transferred the indemnity payments by express provision of the Supplemental Contract which provides that upon his becoming totally and permanently disabled, the Company will pay to the insured, "or a person designated by him for that purpose" etc. R. 6C, (2).

(2) The indemnity payments could have been levied upon by execution and garnishment, or by attachment proceedings. So that clearly the indemnity payments were assets of the bankrupt's estate.

Nor will the proviso in this section of the bankrupt law, as to insurance policies, avail Legg, the bankrupt. We copy the proviso, for convenient reference:

Section 110 (a) (5), Title 11, U. S. C.:

> "Provided, when any bankrupt shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representative, he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors partici-

pating in the distribution of his estate under the bankruptcy proceedings; otherwise the policy shall pass to the trustee as assets. * * *." (R. 23.)

The bankrupt did not exercise his option to ascertain the cash surrender value of the policy and pay or secure to the trustee the sum so ascertained, and the policy, even if it be treated broadly as an insurance policy, passed to the trustee as assets, under express provision of the bankrupt law.

This is a complete answer to Prof. Eager's opinion that the Court should have held "that the contract, in its broad terms, is a life insurance policy, and that the total disability benefits came within the exemption clause." If an insurance policy, how could it come within the exemption clause when the bankrupt did not do the things required to bring it within that clause?

The learned opinion of the Referee reviewing the authorities, approval by the District Judge, and the short, clear, crisp, and convincing opinion of the Court of Appeals, leave little to be said in support of the judgment in this case.

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No. 54

In the Supreme Court
of the
United States

OCTOBER TERM, 1935.

GEORGE EVERETT LEGG,
Petitioner,

v.

E. ST. JOHN,
Trustee.

Certiorari to
C. C. A.
Sixth Circuit.

SUPPLEMENTAL BRIEF FOR TRUSTEE

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No. 54

In the Supreme Court

of the

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OCTOBER TERM, 1935.

GEORGE EVERETT LEGG, PETITIONER,

vs.

E. ST. JOHN, TRUSTEE.

SUPPLEMENTAL BRIEF FOR TRUSTEE.

On page 6 of our first brief, where authorities were cited in support of the proposition that the indemnity feature is separate, distinct, and independent of the life insurance feature, we add the following:

Chat. Pipe Wks. v. Dumler, 62 A. L. R., 1003 (Miss.)
Penn. Mu. Ins. Co. v. Hartle, 91, A. L. R. 1466. (Md.)
N. Y. Life Ins. Co. v. Davis, (Fed.)
Greber v. Equitable, (Arizona.)
Chambers v. N. Y. Life. (N. Y. Supp.)
Kaffanges v. N. Y. Life, 59 Fed. (2nd) 475.
Conn. Ins. Co. v. Brandstein. (N. Y. Supp.)
Cravens v. Robbins, 8 Tenn. App., 437.
See comments on most of these cases in 91 A. L. R., 1470.

A head note fairly states the Court's holding in the Maryland case, decided May 26, 1935.

> "A supplemental agreement attached to a life insurance policy whereby, for an additional premium, an insurer contracted to pay a stated sum monthly in event of the total and permanent disability of the insured, to waive the payment of premiums under the policy during the period of such disability, and to pay double the amount of the life indemnity if the death of the policyholder should result from an accident, does not become an indivisible part of the policy, and is, therefore, susceptible of rescission because of material misrepresentation in the application though the policy itself, by reason of an incontestable clause, is not."

91 A. L. R., 1466. *Pa. Co. v. Hartle.*

In Kaffanges v. New York Life Insurance Company, the policy was issued in August, 1926, and contained an incontestable clause as to *death* benefits, but not as to *disability* provisions. The Circuit Court of Appeals, First Circuit, held that the disability clause was procured by fraud and ordered it cancelled, notwithstanding the incontestable clause as to the life insurance feature.

59 Fed. (2nd.) 476.

A Disability Policy Has No Cash Surrender Value

We readily agree that a disability insurance policy has no cash surrender value, within the meaning of section 70a of the Bankrupt law. A Disability insur-

ance policy does not grow in value, as does a life policy, as the years go by. On the contrary the possibility of it ever being of any value becomes less and less each year until the age of 60 is reached, when the contract (policy) expires by limitation, and is worthless.

This will account for the disparity in premiums, $425.83 per year for the life feature, and $49.39 for the disability feature. See the separate policies—(R. 6 A, and 6 C) of the Record.

The Bankrupt act means that when the bankrupt has a policy of life insurance which has a cash surrender value (and none but life insurance have such value), he may pay that value to the trustee in bankruptcy, and, in the language of the bankrupt statute, "continue to hold, own, and carry such policy free from the claims of creditors," etc.

While the bankrupt law speaks of "surrender value" it does not mean that the policy shall be surrendered, given up to the Insurance Company for cancellation, but means that if the "surrender value" is paid to the trustee, the policy with its surrender value will continue to be the property of the insured bankrupt free from the claims of creditors.

While the Bankrupt Law says "any insurance policy which has a cash surrender value" it clearly refers to life insurance. It does not mean fire, marine, or fidelity insurance.

Here the indemnity policy has matured. It is no longer a policy. It has been merged into an acknowl-

edged, definite, certain, liquidated obligation on the part of the Insurance Company to pay Legg a certain amount every month.

Let us suppose that Legg had become totally and permanently disabled by the loss of both feet in a railroad accident, while a passenger, and had compromised his claim for damages against the Railroad Company for $25,000.00, payable in ten equal, annual installments. No one would say that he could go into bankruptcy and keep as his own the sums that the Railroad Company owed him, instead of turning them over to the trustee as assets to be administered.

Precisely the same principle will apply to the indemnity payments provided by the disability policy. The same accident which gave him a right of action against the railroad, gave him a matured, liquidated debt against the Insurance Company. After the compromise, in which the $25,000.00 became a debt of the Railroad Company, both were debts due to Legg.

By the terms of section 70a (5) the trustee in bankruptcy shall be vested with the title to "property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him."

It is no answer to say that the indemnity payments were contingent upon Legg's continuing to be totally disabled. Of course, if he should be restored to health the payments would stop. But that is not a matter about which the bankrupt can complain until his debts are paid.

In a case in which the bankrupt's commissions on renewal premiums, amounting to about $5000 per year and having several years to run, it was held that the commissions were property to go to the trustee.

It was also held that the fact that the interest in property is defeasible and contingent does not prevent it from being transferable, within the meaning of Sec. 70a.

In re Wright, C. C. A. (2nd. Cir.) 157 Fed., 544.
In re Baudouine, 96 Fed., 538.

"The title to the property remained in Collander until it was destroyed by fire, and also the title to the policies. Hence the destruction of the property changed or ripened the conditional obligation of the insured into a fixed obligation to pay the amount of indemnity stipulated for in the policy. To hold that this ripening of the obligation made it after acquired property, which would not vest in the trustee, but which the bankrupt could hold as his own would be as absurd," etc.

Fuller v. N. Y. Fire Ins. Co., Supp, Ju. Ct. of Massachusetts, 67 N. E. 800.
Mu. Life Ins. Co. v. Smith, C. C. A., (1st. Cir.). 184 Fed., 5.
In re Kern, 8 Fed. Supp., 246.
Cohen v. Samuels, 245 U. S. 50, 52-53.

See Tenn. Law Review Article, Volume XI, number 2, Feb. 1933, pages 84-95.

The "cash surrender value" of a life insurance policy need not be expressly stipulated in the policy. The Court said:

> "The material and important fact is that . . . the policy had a value which the company was willing to pay and, which the bankrupt by his own act could obtain."

Here Legg was obtaining a certain amount each month.

In re Gannon, 247 Fed. 936. (C. C. A., 2nd Cir.)

A case much relied on by the Bankrupt in this case, construes a Pennsylvania statute, said to be identical with the Tennessee exemption statute. That case presented an annuity contract which provided that the insured should receive a monthly annuity at the age of 65 for the remainder of his life. The case is easily distinguishable from this as the following excerpt from the Court's opinion will show:

> "We do not agree, however, that they (payments) are for the sole benefit of the annuitant. We think it clear that where, as in this case, the wife is named as beneficiary, the contract is made for the benefit of the wife."

Bowers v. Reinhard, (C. C. A. 3d.) July 12, 1935.

Here no one is named as beneficiary except Legg himself in the contract of indemnity.

By express provision "the trustee of the estate of a bankrupt" . . . "shall in turn be vested . . . with the title of the bankrupt" . . . to all . . . "property which prior to the petition he could by any means have transferred," etc. Sec. 70a (5).

That this includes the Disability Policy is shown in the policy itself which provides that the indemnity

is payable "to the insured, or a person designated by him for that purpose." (R. 6C 2.)

If the bankrupt could "transfer" the policy to "a person designated," then the title vested in the trustee in bankruptcy by this express provision of the bankrupt law.

We have modified the views expressed in former brief to the extent of admitting that there is no surrender value to a Disability Indemnity Policy.

Indemnity policies, "giving the permanently disabled policy holder . . . a monthly income," were first introduced about 1920. (Brief for Legg, 14 (d).

This was 22 years after the enactment of the bankrupt law with an insurance provision, and seven years after the decision in Burlingham v. Crouse, 228 U. S., 473.

The Trustee is not claiming "a vested property right" in Legg's disability. The case has passed the "disability" stage. The disability has ripened into a liquidated debt, which the Insurance Company admits, has been paying, and will continue to pay until such time as the insured, "on demand from the company," shall fail to "furnish due proof of the continuance of such disability." It is no longer a question of "earnings," but merely that of paying admitted liability.

CONCLUSION

The Trustee believes that the Referee, District Judge, and the Circuit Court of Appeals were justified

in holding that the contracts were wholly separate one from the other, the one, a contract of life insurance, the other a contract of Indemnity, and as the bankrupt or petitioner in this cause was actually receiving the benefits *himself* that he does not come within the class intended to be protected by 8456 or 8458 of the Tennessee Code, or 70a of the Bankruptcy Act.

We believe that the reasoning of the various cases we cited is sound, that the two policies are separate and distinct, one from the other; the contracts were physically separated; the premiums were of different amounts, the hazards are different; the beneficiaries are different. Both policies were signed by the President and Secretary of the Company which was wholly unnecessary if one contract. The contract of indemnity may be cancelled without the cancellation of the life insurance policy, which could not be done if one and the same contract, as claimed by Petitioner. The cancellation of one would have been the cancellation of both. The contract of indemnity says in express terms, last paragraph, under sub head 2, that no other provision except (a) and (b) not pertinent in this case, shall be deemed a part hereof. We think they are separate, by their own express terms.

Regarding our contention that these disability payments are not exempt under the Tennessee Code, we think that sections 8456 is self explanatory in that it says "*in case of his death,*" which is not the case at bar.

As to 8456 and 8458 we have cited two Tennessee

decisions, *Cravens v. Robins*, 8 Tenn. App. 437, and *Sparkman v. Chandler*, 162 Tenn. 614. Both cases define who are in the classes intended to be protected. The income must not be received by the insured but must be received by some wife, child or dependent relative, as set out in 8458. Granting for argument's sake that it is an "annuity," still for the same reason it would not be exempt under the Tennessee Code because the insured is not in the specified classes, and as these statutes are in derogation of common law they should have a strict interpretation.

We believe this case is unlike the case of *Local Loan Co. v. Hunt*, 292 U. S. 234, relied on by petitioner, because there the issue was an unearned salary; the consideration for the pay had not passed, and did not pass until the labor was expended, which was after bankruptcy. Here it is quite the contrary, in fact it is a present property right existing at the time of the filing of the petition, vested, nothing else to be done, a contract ripened into an obligation for a definite amount, payable to a definite person on definite dates, similar to a series of notes receivable, or a life estate, whose duration is uncertain, or a remainder interest, etc., all of which pass to the Trustee. We claim that this was a property right, bought and paid for, nothing else to be done at the time of the filing of the petition and that this right passed to the Trustee, as such. That it would be unreasonable to say that if the Trustee had notes which had not yet matured, and could not be reduced to judgment until maturity, would be after acquired property and not a vested property

right. Yet we believe that the Petitioner has been driven to this extent in his brief. The indemnity or supplemental contract is no longer an insurance policy but a matured obligation, liquidated, concrete, absolute, and definite on the date of the filing of the bankrupt's petition. The only uncertainty relative to the disability payments was the length of time for which they were to be paid and not the person, which contingency does not divest the Trustee of the property as an asset.

Suskin & Berry, Inc., v. James Rumley,
68 A. L. R., 772.

We believe, in conclusion, that to hold that the Petitioner could have these payments declared exempt under 70a and not to pass to the Trustee as assets, would be to put him on a higher plane than if he were working for a salary, in which case he would only receive the benefit of $40.00 per month exemption, which he has and is receiving monthly, and would in effect nullify the true meaning of 70a passed in 1898, twenty-two years before the origin of this type of insurance (their B. p. 14), and which Act exempted *ONLY policies* of *insurance* which had a *cash surrender* value. *This contract of indemnity had none.*

What Congress meant was that if the Bankrupt had any property of any nature whatever, at the time of Bankruptcy, except as specifically exempted, he must turn it over to the Trustee for the benefit of his creditors. Congress went still further and said in ex-

press terms in 70a "property which prior to the filing of petition he *could by any means have transferred*," etc. The supplemental contract says it will pay to him or to a person *designated* by him; if he could designate, he could transfer and therefore the Trustee contends that Congress defined this contract of indemnity as a present vested property right, in express terms, and said that those rights passed to the Trustee as assets.

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Attorneys.

P. 3.

SUPREME COURT OF THE UNITED STATES.

No. 54.—October Term, 1935.

George Everett Legg, Petitioner, vs. E. St. John, Trustee. | On Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[January 6, 1936.]

Mr. Justice Brandeis delivered the opinion of the Court.

The question for decision is whether the bankrupt or his trustee is the person entitled to future monthly disability benefits payable under a contract entered into before the adjudication.

On March 8, 1934, Legg, a resident of Tennessee, was, on his petition, adjudged a bankrupt. He then held a policy in the Metropolitan Life Insurance Company by which it agreed, in consideration of an annual premium of $425.83, to pay upon his death either $24,000 in 240 monthly installments or the single sum of $17,452, as commuted value. By a supplementary contract issued the same day and attached to the policy, the company, for an annual premium of $49.39, agreed, among other things, to pay a monthly benefit of $174.52, upon due proof that the insured had become totally and permanently disabled before the age of 60. By this provision, if Legg was "prevented thereby from engaging in any occupation and performing any work for compensation or profit," the company undertook to:

"1. Waive the payment of each premium falling due under said Policy and this Supplementary Contract, and,

"2. Pay to the insured, or a person designated by him for the purpose, or if such disability is due to, or is accompanied by, mental incapacity, to the beneficiary of record under said Policy, a monthly income of $10 for each $1,000 of insurance, or of commuted value of instalments, if any, under said Policy."

Legg had become totally and permanently disabled several years before the adjudication. The company had treated its obligation as matured; had waived the payment of premiums on both the policy and the supplementary contract; and, until the adjudication, had

paid to him monthly the disability benefits. The bankrupt asked to have the life insurance policy and also the future disability benefits payable under the supplementary contract exempted from the operation of the assignment to the trustee. The latter set aside as exempt the life insurance policy and its cash surrender value, but reported that the obligation of the company to make the benefit payments was an asset of the estate. The bankrupt excepted to the report in so far as it denied these to him. The referee ruled that the right to receive them vested in the bankrupt at the time of the adjudication; and that this right given by the supplementary contract is not insurance within the meaning of the laws granting exemptions. He accordingly overruled the exception of the bankrupt. But he directed that of the $174.52 payable monthly, the bankrupt should receive $40 as income exempt under the Tennessee law; and the trustee the balance, namely $134.52. The trustee acquiesced in the decision; the bankrupt sought review. The District Court confirmed the referee's order; and its judgment was affirmed by the Circuit Court of Appeals. 76 F. (2d) 841. This Court granted certiorari, conflict in decisions being alleged. 295 U. S. 728.

The bankrupt contends that the "Supplementary Contract" covering disability is not a separate and distinct contract, but an integral part of the life insurance policy; that the obligation to pay disability benefits is insurance within the meaning of § 70 (a) of the Bankruptcy Act; that it did not pass to the trustee, since that feature has no cash surrender value; and that if it be held that the contract for disability benefits has a cash surrender value, its amount should be ascertained and the bankrupt be given the opportunity, by paying such value to the trustee, to hold the obligation free from the claims of creditors. The bankrupt contends further that any future disability payments are in the nature of future earnings or after-acquired property and, hence, do not pass to the trustee. Finally, he insists that the obligation of the company to pay disability benefits is property exempt under the law of Tennessee. All of these contentions are, in our opinion, unsound.

The applicable statutes are these:

The Bankruptcy Act of July 1, 1898, c. 541, 30 Stat. 544, 548, provides, in § 6, that it shall not affect the allowance of exemptions to the bankrupt prescribed by the laws of the State of his domicile; and in § 70 (a) that:

"when any bankrupt shall have any insurance policy which has a surrender value payable to himself, his estate, or personal representatives, he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the trustee as assets . . . ."

The Tennessee Code (1932) provides:

"8456. *Insurance on husband's life, effected by himself, goes to wife and children.*—Any life insurance effected by a husband on his own life shall, in case of his death, inure to the benefit of his widow and children; and the money thence arising shall be divided between them according to the statutes of distribution, without being in any manner subject to the debts of the husband.

"8458. *Life insurance or annuity for or assigned the wife or children, or dependent relatives is exempt from claims of creditors.*—The net amount payable under any policy of life insurance or under any annuity contract upon the life of any person made for the benefit of, or asigned to, the wife and/or children, or dependent relatives of such person, shall be exempt from all claims of the creditors of such person arising out of or based upon any obligation created after the effective date of this Code, whether or not the right to change the named beneficiary is reserved by or permitted to such person."

First. As Legg had become totally and permanently disabled before the adjudication, the company's obligation to make benefit payments monthly thereafter was property of the bankrupt which passed to the trustee, unless specially exempted by the law of Tennessee, or by § 70 (a) of the Bankruptcy Act. It was not exempted by § 70 (a), because the obligation to pay disability benefits is not "insurance" within the meaning of that section. The term "insurance" as there used referred only to legal reserve life insurance, the kind of insurance to which a cash surrender value was a ~~recognized~~ common incident. For such value specific detailed provision is commonly made in life policies. Compare *Burlingham* v. *Crouse,* 228 U. S. 459; *Cohen* v. *Samuels,* 245 U. S. 50.[1] The effect of the provision in § 70 (a) is to assign to the trustee the cash surrender value of the life insurance policy. *Everett* v.

[1] The Legg policy contained a table of cash surrender values. This related to the separate obligation to pay the face of the policy on death. It had no relation to the company's obligation under the "Supplementary Contract" for disability benefits.

Judson, 228 U. S. 474. No provision is made in the "Supplementary Contract" for a cash surrender value of the obligations thereby assumed; and none is provided by law or custom. Provision for the payment of disability benefits in connection with such life insurance was not introduced in the United States until about twenty years after the passage of the Bankruptcy Act.[2]

Second. The fact that the disability benefits are provided for in a "Supplementary Contract" issued on the same day as the policy and physically attached thereto does not make them life insurance. The life policy and the contract were executed as distinct instruments. The "Supplementary Contract" was to operate for some purposes as if a part of the life policy.[3] But for all other purposes it is a separate obligation. The hazards covered by the two instruments are obviously different. The beneficiaries differ also. The payment under the life policy was to be made to the wife;[4] the disability benefits are to be paid to Legg himself. A

[2] Compare In re Kern, 8 F. Supp. 246. As early as 1910, some companies had inserted in their policies a provision that if the insured became "totally and permanently" disabled, payment of premiums would be waived so long as such disability continued. See New York Life Insurance Co. *v.* Edwards, 271 U. S. 109, 117, 118. A little later, some companies introduced the provision that in case of total and permanent disability the face of the policy would be paid in annual instalments beginning after the accrual of disability—the amounts so paid to correspondingly reduce the final amount of the policy payable at death; so that the entire liability under the policy could be extinguished even without death. Policies issued under the War Risk Insurance Act, October 6, 1917, c. 105, 40 Stat. 398, provide in addition to payments of (say) $10,000 on death, monthly benefit payments up to $57.50, the aggregate to be deducted from the face of the policy. It was not until about 1920 that provision was made for the payment, in consideration of an additional premium, of monthly disability benefits in addition to the full face of the policy at death. See Hunter and Phillips, "Disability Benefits in Life Insurance Policies," Actuarial Study No. 5 (2nd ed.), Part 1, ch. I (1932); Arthur Hunter, Papers on Disability Benefits, Eighth International Congress of Actuaries (1927), p. 83.

[3] It concludes: "The Supplementary Contract shall be deemed to be a part of the above numbered Policy and the provisions of said Policy concerning declarations and representations by the insured, restrictions, payment of premiums, change of beneficiary, and assignment, are hereby referred to and by such reference made a part hereof. No other provision of said Policy shall be held or deemed to be a part hereof, except (a) The provision of said Policy as to incontestability shall apply hereto, but shall not preclude the Company from requiring as a condition to recovery hereunder, due proof of such total and permanent disability as entitles him to the benefits hereof. (b) The provision of said Policy as to reinstatement shall apply hereto, except that this Supplementary Contract shall not be reinstated unless said Policy is in force and no premium is in default thereon, or unless said Policy is reinstated at the time of reinstatement of this Supplementary Contract."

[4] Later, Legg changed the beneficiary to his children, reserving the right to change the beneficiary thereafter.

separate and different premium was exacted for the obligations assumed in each instrument. It was provided that forfeiture of the life policy would terminate all rights arising from disability; but the supplementary contract could be terminated by Legg without affecting otherwise his life policy.

Third. The obligation of the company to pay disability benefits in the future is not after-acquired property. It is property which was acquired by Legg long before the adjudication, and fully paid for by the premiums paid before the adjudication. Nor are the benefits payable after the adjudication in any sense future earnings. They are not the fruit of anything to be done by Legg after the adjudication. The right to receive disability benefits in the future does not differ from any other right acquired before adjudication to receive money thereafter. It is in essence an annuity purchased and paid for prior to the adjudication. Like other property, it passed to the trustee, unless exempted by the law of the bankrupt's domicile.[5] The principle declared in *Local Loan Co.* v. *Hunt,* 292 U. S. 234, is not applicable here.

Fourth. No statute of Tennessee exempts disability benefits. Its law is, in some respects, more liberal to the debtor than § 70 (a) of the Bankruptcy Act. Section 8456 provides that "any life insurance effected by a husband on his own life shall, in case of his death, inure to the benefit of his widow and children", free from claims of the husband's creditors. This has been held to mean that the cash surrender value, as well as the policy, is exempt.[6] But there obviously was no intention to exempt this contract right which is not life insurance, or "the money thence arising," since section 8456 is, in substance, a re-enactment of the statute passed in 1846. Section 8458, enacted in 1925, and slightly modified since, is not applicable here. It deals only with life insurance and annuity contracts "made for the benefit of, or assigned to, the wife and/or children, or dependent relatives." Even if a contract for future disability benefits be deemed an annuity

[5] See In re Wright, 157 Fed. 544; In re Burtis, 188 Fed. 527; In re Matschke, 193 Fed. 284; In re Evans, 253 Fed. 276. Compare In re Baudouine, 96 Fed. 536; Mutual Life Ins. Co. *v.* Smith, 184 Fed. 1, 5; In re Balsier, 215 Fed. 134.

[6] See Dawson *v.* National Life Ins. Co., 156 Tenn. 306; In re Stansell, 8 F. (2d) 363; Grade, Exemption of Life Insurance Policies Under Tennessee Statutes, etc., 11 Tenn. Law Rev. 34. Compare Lunsford *v.* Nashville S. & L. Corp., 162 Tenn. 179.

within the meaning of that section, it does not apply, because this contract to pay disability benefits was not made for, and has not been assigned to, Legg's wife, his children, or any dependent. The highest court of Tennessee has not had occasion to decide whether future disability benefits are exempt from claims of creditors; but the intermediate appellate court has held that the statute exempting life insurance does not apply to disability benefits payable under a so-called health-insurance policy. *Cravens* v. *Robbins*, 8 Tenn. App. 435, 437.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.